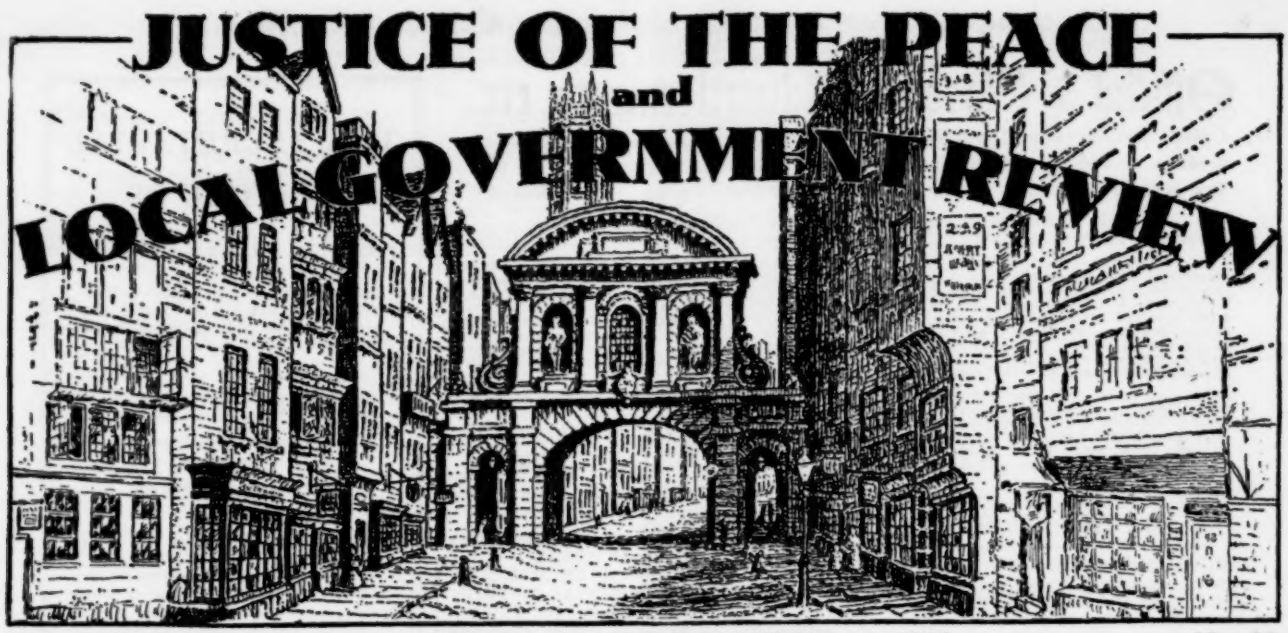

VOL. CXVII LONDON: SATURDAY, JULY 18, 1953 No. 29

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

SITUATIONS VACANT

EAST SUFFOLK COUNTY COUNCIL—vacancy exists for a Senior Assistant Solicitor at salary on scale £950—£1,150 per annum. Applications, with particulars of experience and names of two referees, to Clerk of the County Council, County Hall, Ipswich (from whom further particulars may be obtained), not later than Friday, July 31, 1953.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU T. E. Hoyland. **Ex-Detective Sergeant.** Member of the B.D.A., F.B.D., Associated American Detective Agencies, and the World Secret Service Association. Confidential enquiries ; Divorce, etc. ; Over 600 agents in all parts of the World. Over twenty-five years C.I.D. and Private Detective Experience at your service. 1, Mayo Road, Bradford. Tel. : 26823 day or night. Established 1945.

PARKINSON & CO., East Boldon, Co. Durham. Private and Commercial Investigators. Instructions accepted from Solicitors only. Tel.: Boldon 7301. Available day and night.

COUNTY OF KENT

Appointment of Male Probation Officer

THE Kent Probation Committee invites applications for the appointment of a whole-time Male Probation Officer to serve in the Kent Probation Area.

The appointment will be subject to the Probation Rules, 1949 to 1952, and the salary will be in accordance with the scales provided in the Rules. The appointment is superannuable.

Applicants must be between the ages of 23 and 40, except in the case of serving officers, and must be qualified to deal with probation cases, matrimonial differences and other social work of the Courts.

The selected candidate will be required to pass a medical examination.

Applications, stating age, experience and educational qualifications, together with copies of not more than three recent testimonials, should be sent to the undersigned within fourteen days of the appearance of this advertisement.

W. L. PLATTS,
Clerk of the Peace.

County Hall,
Maidstone.

LANCASHIRE (No. 14) COMBINED PROBATION AREA
COUNTY BOROUGH OF BOOTLE AND KIRKDALE PETTY SESSIONAL DIVISION

Appointment of Full-time Female Probation Officer

APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers, for the appointment of a Full-time Female Probation Officer for the above area.

Candidates must not be less than 23 nor more than 40 years of age, except in the case of a serving Probation Officer.

The appointment will be subject to the Probation Rules 1949/1952 and the salary will be according to the scale prescribed by those Rules and subject to Superannuation deductions.

The successful applicant will be required to pass a medical examination.

Applications, in own handwriting, stating age, education, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than July 31, 1953.

P. HULME,
Secretary to the
Probation Committee.

Court Buildings,
Oriel Road,
Bottle,
Liverpool 20.

COUNTY BOROUGH OF HUDDERSFIELD

Assistant Solicitor

ASSISTANT SOLICITOR required in office of Town Clerk. Experience in advocacy required, local government experience an advantage. Salary within Grade A.P.T. VII (£710 to £785 per annum) according to experience.

Applications, stating age, whether married or single, giving full details of experience and qualifications, with copies of not more than three recent testimonials, and endorsed "Assistant Solicitor," should reach me not later than July 27, 1953.

HARRY BANN,
Town Clerk.

Town Hall,
Huddersfield.

CHESHIRE PROBATION AREA

(1) Deputy Principal Probation Officer.
(2) Senior Probation Officers.
(3) Men Probation Officers.

APPLICATIONS are invited for the above mentioned appointments in the Cheshire Probation Area at salaries in accordance with the Probation Rules, 1949/52.

The appointments will be subject to the provisions of the Probation Rules, and successful applicants will be required to pass a medical examination.

Applications, upon forms which can be obtained from this office, must reach me not later than August 1, 1953.

H. CARSWELL,
Secretary to the Committee.

St. John's House,
Chester.

COUNTY OF DURHAM

Whole-time Assistant to Justices' Clerk, Castle Eden

EXPERIENCE in all branches of the work of a Justices' Clerk's office essential. Salary £515 per annum. The appointment is superannuable. Tenancy of new house available. Apply, giving particulars of age, experience and the names of two referees.

A. J. FINLAY,
Clerk to the Justices.

Magistrates' Clerk's Office,
Castle Eden,
Co. Durham.

BOROUGH OF COLCHESTER

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors having local government experience for the appointment of Deputy Town Clerk. The salary will be £1,050×£50—£1,250, and the conditions of service in accordance with the recommendations of the Negotiating Committee for Chief Officers of Local Authorities. The appointment will be determinable by two months' notice.

Applications, together with the names of two referees, must reach me by July 27.

Canvassing is prohibited, and candidates must state whether they are related to any member or senior officer of the Council.

N. CATCHPOLE,
Town Clerk.

Town Hall,
Colchester.

COUNTY OF DERBY

Appointment of Woman Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Woman Probation Officer for the Ilkeston Petty Sessional Division and the Long Eaton Area of the Derby County Petty Sessional Division. The appointment and salary will be subject to the Probation Rules. The officer selected will be required to provide a motor-car for which an allowance will be paid in accordance with the County scale and to undergo a medical examination.

Forms of application may be obtained from the undersigned and should be completed to reach me not later than August 15, 1953.

D. G. GILLON,
Secretary to the Derbyshire Combined Area Probation Committee.

County Offices,
Derby.

COUNTY OF NORTHAMPTON

Senior Assistant Solicitor

APPLICATIONS are invited for the above-named appointment in my office on salary Grade B (£950—£1,150). Applicants should have at least three years' experience in local government since admission and be competent in conveyancing and advocacy.

No form of application is issued but those applying for the post should send particulars of age, education, war service and experience, together with the names of two referees, to the undersigned not later than August 5, 1953.

J. ALAN TURNER,
Clerk of the County Council.

County Hall,
Northampton.

COUNTY BOROUGH OF ST. HELENS MAGISTRATES' COURTS COMMITTEE

Appointment of Second Assistant

APPLICATIONS are invited for the above appointment.

Applicants must have a good knowledge of the work of a Justices' Clerk's Office, an should be competent shorthand-typists. Salary scale £525-£570. The appointment is superannuable and the successful applicant will be required to pass a medical examination.

Applications, giving details of age, and experience, accompanied by two recent testimonials to be sent to the undersigned not later than July 27, 1953.

W. McCULLEY,
Clerk to the Justices.

Town Hall,
St. Helens.

BOROUGH OF BECKENHAM

Committee Clerk

APPLICATIONS are invited for this post, at a salary within the Grades A.P.T. IV-V. Housing accommodation cannot be offered. Applications, with names of two referees, to be sent to me by Wednesday, July 22, 1953.

R. WEBSTER STORR,
Town Clerk.

Town Hall,
Beckenham.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVII. No. 29 LONDON: SATURDAY, JULY 18, 1953 Price 2s. 3d. (including Reports) Price 1s. 3d. (without Reports)

Pages 453-472 Offices: LITTLE LONDON, CHICHESTER, SUSSEX. [Registered at the General Post Office as a Newspaper]

NOTES of the WEEK

Publication of Name of Juvenile Offender

There is something to be said for the request of some hundreds of parents that Leicestershire magistrates should permit the publication of the names and addresses of juveniles found guilty of sexual offences against young children. The immediate occasion was an indecent assault upon a four year old girl by a fifteen year old boy, who had quite recently been put on probation for a similar offence. The parents feel that publication of the name and address of an offender would enable them to safeguard their children more effectively against such offences.

No one would wish to be hard on a young boy who, without realizing the seriousness of what he was doing, committed a sexual offence on one occasion only and without aggravating circumstances. Nevertheless, the protection of innocent little children is of more importance than the feelings of offenders, and when the offender is in his teens and his victim of tender years, the offence is necessarily serious. If publication of particulars about the offender can be the means whereby parents can warn their children and prevent them from any contact with him, it certainly seems worth while to consider such a petition as has been presented to the Leicestershire magistrates, and to see whether it is possible to comply with it as being in the interests of justice. In any event, we should deprecate a hard and fast rule that publication should be allowed in all cases. We think much should depend on the age of the offender and the victim, as well as on the circumstances of the offence and the likelihood of its repetition.

Mental Condition of Defendant in Matrimonial Case

If a wife obtains a summons against her husband for a separation or maintenance order, and it appears that there is some question as to his mental condition, the first point may be whether he is capable of appearing and defending himself or even of instructing a solicitor. In some cases, no doubt, a solicitor may be able to satisfy the court that the defendant has duly instructed him and that the court can properly proceed with the hearing. If the defendant is not represented, the court may feel that even if the summons has been handed to him personally it would not be proper to proceed with the hearing.

In the High Court such questions can be dealt with under the Matrimonial Causes Rules, which provide for the appointment in certain cases of a guardian *ad litem*. These Rules cannot be applied to summary proceedings, and there is no general provision for the appointment of a guardian *ad litem* in proceedings before a magistrates' court. Nevertheless, cases decided in the superior courts provide guidance on matters of principle.

In *Gore-Booth* v. *Gore-Booth* (*The Times*, June 24) a Divisional Court (Lord Merriman, P., and Pearce, J.) ordered the re-hearing of the petition, on the application of the official solicitor as guardian *ad litem* to the husband.

The wife had presented a petition for divorce on the ground of the alleged cruelty of her husband who was undergoing mental treatment. Documents were served upon him, but no appearance was entered and a decree *nisi* was granted. Later, the husband filed notice of motion for a re-hearing, alleging illness when the petition was supposed to have been served and inability to file a defence and that the petition had not properly been served.

On inquiry by the Official Solicitor, a medical officer stated his opinion that when the documents were served the husband was a person of unsound mind in the sense that he was not capable (*a*) of making up his mind rationally whether or not he wished his marriage dissolved, and (*b*) of conducting his defence to his wife's petition unaided or properly instructing solicitors so to do. This was substantiated by affidavit.

In delivering judgment, the President observed that if the husband was a person of unsound mind at the material time then there was no effective service.

Some of such cases may present really difficult problems which justices may think could be more conveniently dealt with by the High Court, and they may think it proper, on that ground, to decline to make any order.

Mistaken Identity

As the magistrate at the Mansion House, London, said recently when agreeing to the withdrawal of the prosecution against a man who was shown to be the victim of mistaken identity, it is remarkable that so few cases of this kind occur. In this instance the defendant had been identified by one man and later picked out at an identification parade. There seemed to be a sufficient case, but fortunately two police officers felt uneasy and, to their credit, pursued their investigations further, with the result that another man, who resembled the defendant and dressed like him was arrested, and admitted all the offences that had been alleged against the defendant.

The unfortunate thing about identification parades is that a prosecutor or witness is inclined to pick out some one who may resemble the alleged offender, assuming unconsciously that the offender is sure to be there, and so it is only a question of picking out the man who fits in fairly well with what is remembered of the offender. We have no doubt the police take pains to explain that the alleged offender may or may not be present, and that

great care must be taken about identifying him. It is very rare for an accused person to complain of unfairness on the part of the police in relation to an identification parade, and when mistakes occur they are not often attributable to the police.

One of the most notorious cases of mistaken identity was that of Adolf Beck. It is generally considered that his case had much to do with the setting up of the Court of Criminal Appeal. There was considerable opposition to the Bill, but today, after more than forty years of the working of the court, it seems difficult to understand why it was not welcomed on all sides.

Juvenile Delinquency in Nottingham

In 1948, a thoroughly representative panel was appointed by the City of Nottingham Education Committee to examine the problem of juvenile delinquency in the City. Its report covers the period 1946 to 1951. It is likely to be the more widely read since it is not presented in conventional form, but is enlivened by a number of striking drawings, the first of which represents a flock of 100 sheep with only one black among them, in order to show in graphic form the proportion of young delinquents to the whole age group.

The panel has not attempted too much. Its desire has been to attract public attention to a serious problem and to suggest remedies that can be based upon local information. The result is a useful, practical report.

The idea that certain periods of the year are attended by the greatest number of offences does not hold good in Nottingham at all events. The distribution throughout the year appears to be quite haphazard. There is, however, nothing haphazard about the distribution of offenders in terms of ability. "Local figures . . . as well as national figures show that the intelligent delinquent is rare and that most young delinquents are of somewhat low intelligence and attainment."

What have come to be known as problem families account for a considerable number of young offenders. Statistics show that about a quarter may be accounted for in this way but the special sub-committee which made an investigation covering the years 1949, 1950 and 1951, had strong reasons to believe that many more of the families of delinquents could be regarded as "problem families." A detailed analysis shows that some such families recur year after year and that in a considerable majority of the "problem families" of young delinquents' parents or others living with them have also been before the courts. One of the recommendations of the panel is that "The panel are of the strong opinion that it is urgently necessary for the local authority to take steps to remedy the social evil represented by "problem families." Acknowledgment is made to those who have achieved good results by voluntary effort, but it is felt that the matter calls for something more than can be achieved by voluntary effort alone. Another recommendation which will find general acceptance is: "The panel support the opinion of panels in other areas that the establishment of Special Approved Schools for educationally sub-normal children by the Home Office should be strongly urged."

Defence Regulations

Little by little, although in some people's view all too slowly, war time rules and regulations are being repealed. It is very difficult to be sure that one keeps up to date with these repeals. The latest statutory instrument brought to our notice in this connexion is No. 973 of 1953, the Defence Regulations (No. 5) Order, 1953. In this we note the repeal of what remains of the Defence (Recovery of Fines) Regulations, 1942, which means the end of the special scale of alternative terms of imprisonment contained in reg. 3 (3). We are left, therefore, with only the general scale set out in sch. 3 to the Magistrates Courts Act, 1952, and the special scale relating to customs and excise offences in s. 285 of the Customs and Excise Act, 1952.

Other repeals are regulations 55D, 55E, 77, 93AA, 94, 96 and 103 of the Defence (General) Regulations, 1939, and there are amendments of others of these regulations. An important one is the revocation of para. 1B of reg. 55, which means the abolition of the special offence of stealing or receiving a controlled article. The ordinary law will deal adequately with any such thefts or receiving offences. The powers of competent authorities to give directions, under reg. 56, with respect to public utility undertakings and other related matters are effected by the repeal of paras. (1), (2) and (3) of that regulation.

These are some of the matters dealt with in S.I. No. 973. For those who are likely to be affected, and who still possess copies of the latest edition of the Defence Regulations, the only safe way is to purchase a copy and amend their Regulations accordingly.

Conflicts of Laws in Divorce

Our magisterial readers, and some others such as superintendent registrars, may some time or other be confronted with circumstances parallel to those which came before Pearce, J., in the Probate, Divorce and Admiralty Division in the middle of June: *Har-Shefi*; *otherwise Cohen-Lask* v. *Har-Shefi* [1953] 2 All E.R. 373. A Jewish woman, whose married name was Har-Shefi, petitioned for a declaration that a divorce which her husband had obtained according to Jewish ecclesiastical law was valid by the law of England, and operative here. Her case had already been before the courts on a preliminary point. The wife had been domiciled in England before marriage; and the husband in Israel. He had been deported and was domiciled in Israel, where the marriage had taken place, as he always had been, and accordingly Israel was *prima facie* her domicil also; one question was whether the English court could, strictly, allow her to bring her petition here, without deciding that the divorce was valid—which was the very question to be tried. By a majority, the Court of Appeal decided to let the case proceed, being influenced by the fact that her residence was here (apart from her husband) and that she wished to know how she stood in England, not in Israel: *Har-Shefi* v. *Har-Shefi* [1953] 1 All E.R. 783. It seems that the husband was not interested in her predicament; they had separated; he had obtained a decree of divorce which put him on the right side of the law for re-marriage in Israel—leaving her high and dry. Hence the rather unusual spectacle of a female petitioner asking the High Court to say she was not a married woman. Notwithstanding the domicil in Israel at the time when the husband sought divorce, he had presented a bill of divorcement before the Chief Rabbi of Beth Din in London. On trial of the wife's petition, Pearce, J., said this bill before Beth Din was "the only form of divorce which is open to a person of the husband's faith domiciled in Israel. That must be a valid divorce under English law." So far so good, though it sounds curious that a person domiciled and normally resident in Israel should have no course open to him except to take proceedings before a court which sat in London. The lay courts in Israel have no jurisdiction to dissolve a marriage, but is there no rabbinical court? Of course, whether there is or not, it is open to the courts of Israel to recognize a London court, just as for centuries our own courts recognized the Papal court as ultimate authority in matrimonial causes. There seems no reason, so far, to doubt the view at which Pearce, J,, arrived: *Armitage* v. *A.-G.* [1906] P. 135; *Clark* v. *Clark* (1921) 37 T.L.R. 815, and other cases quoted in an excerpt from *Dicey's Conflict of Laws* at [1953] 2 All E.R. 374. A more notable

feature from the jurist's point of view is the decision of the Court of Appeal at the preliminary stage, whereby the woman, wishing to know whether she was married or single, was allowed to try this issue in an English court. That she was allowed to do so seems satisfactory, since the spouses were *de facto* separated ; she was living in England, and it would have been harsh for our courts to say that the Israel courts alone could pronounce on the validity of the divorce. And, if she had gone there and succeeded in establishing that the divorce was operative, the result she wished, this would have put an end to the presumption of domicil which compelled her to go there to launch her case. There is a circular process involved. The majority decision accords with *Roberts* v. *Roberts* [1902] P. 143, but seems to carry the matter rather further. Conflict of laws is involved, and like so many questions in conflict this can be argued round and about. As we have said, the result seems satisfactory ; it would, on the facts, have been a denial of justice to refuse access to the English court. So far again, so good. But the heading used by *The Times* in reporting this case " Jewish Divorce in England : Validity Upheld " could easily mislead. It should not be supposed that a Jewish couple domiciled in England can obtain from the Jewish ecclesiastical court a decree which dissolves the marriage. Dissolution of marriage is (for all persons domiciled here) a matter for the lay courts, whether the parties be Jews or Roman Catholics or Moslems, or as the case may be. The popular error which might easily arise about this case is parallel to the common delusion that in England Roman Catholics cannot obtain a divorce or be divorced. For purposes of magistrates' courts, and other purposes of English law, it is important to remember that the practice of a religious community in granting to its own members (*e.g.*, Jews or Moslems) what may be called a divorce, or on the other hand in refusing to recognize divorce, is solely a matter of the community's internal discipline. Jews or Moslems (it seems reasonable to suppose) would not attach social stigma or religious disability to a member of the community who married again after a divorce which the Mosaic law or Koran considered good. Roman Catholics, equally reasonably as among themselves, would attach severe religious disabilities to a person who had remarried after having his or her marriage dissolved as the law allows. These matters of community discipline do not affect the operation of the marriage law, and of the machinery it provides for dissolving marriages.

Work at the Lands Tribunal

This Tribunal which was constituted under the Lands Tribunal Act, 1949, has attracted a very substantial volume of litigation in the specialized type or work which it has to perform.

Its composition comprises a President (Sir William James Fitzgerald, O.B.E., Q.C.), other legal members and persons with experience in the valuation of land. All are appointed by the Lord Chancellor.

Its jurisdiction extends to questions relating to compensation for the compulsory acquisition of land and other matters previously dealt with by official Arbitrators under the Acquisition of Land (Assessment of Compensation) Act, 1919. It also deals with applications for the discharge or modification of restrictive covenants under s. 84 of the Law of Property Act, 1925, and with disputes about development value under the Town and Country Planning Act, 1947, as well as rating appeals from local valuation courts under the Local Government Act, 1948. Additional jurisdiction has also been conferred upon the tribunal by orders in council made under s. 4 of the Lands Tribunal Act transferring the powers of the War Damage (Valuation Appeals) Panel and of the Tribunal constituted by the Town and Country Planning Act, 1944, for the assessment of statutory compensation to statutory undertakers under that Act. The Tribunal sits to hear cases not only in London but at other convenient centres throughout England and Wales. Appeal lies from its decision on a point of law by way of case stated to the Court of Appeal.

The latest civil judicial statistics show that 2,994 cases entered the jurisdiction of the Court in 1952 including 722 which were pending at the commencement of the year. A total of 2,246 cases were disposed of leaving a balance of 748 to be carried over to 1953. (The comparative figures for the same period in 1951 show that 2,030 cases were disposed of and that 2,364 were set down during the year.)

Cases relating to compensation under the Acquisition of Land Act, 1919, have declined from 193 (in 1951) to 166 but restrictive covenant cases have increased from 47 in 1951 to 79 in 1952. These last figures would appear to be expressions of the accelerated tempo of building in the past year, which has necessitated the modification or discharge of increasing numbers of restrictive covenants. Rating appeals have declined from 540 in 1951 to 507 in 1952 but in the corresponding period there have been more Central Land Board Appeals (1,408 in 1951 as contrasted with 1,858 in 1952). In 1953 Central Land Board appeals will presumably diminish as the result of the passage of the Town and Country Planning Act, 1953, which abolished payment of development charge with effect from November last year. War Damage Appeals and War Damage references have, as might be expected, gone down appreciably, rating at 116 and 64, respectively, as contrasted with 279 and 111 in 1951. It is surprising, however, that some claimants never give up hope that these War Damage claims will be re-opened by the War Damage Commission.

Altogether the statistics show that the Tribunal is proving a very useful " maid of all work " for issues in which the valuation of land and buildings predominate and before long its jurisdiction will no doubt be in the course of further expansion. Of the five appeals from it in 1952 to the Court of Appeal only one has succeeded which is a formidable record for any tribunal.

Statistics on Ambulances

The importance of clear definitions and rigid adherence to them from the inception of statistics which may be, or as mostly happens ultimately will be, used for comparative purposes is forcibly demonstrated in the Ministry of Health's recent ambulance services costing return for the year 1951-52. An initial view that local authorities had succeeded in running their services more economically, derived from reductions between 1950-51 and 1951-52 from 9·0 to 8·3 in miles per patient and from 15*s.* 6*d.* to 15*s.* 2*d.* in cost per patient, is impaired by variations in computing and accounting practice. Differences between total figures for the two years when expressed in percentages are so lacking in consistency as to render the validity of any comparisons extremely doubtful ; an increase in the total number of patients by about twenty *per cent.* seems to be seriously inflated by more general observance of the definition of a patient as " one patient carried once in one direction " instead of out and back sometimes being counted as one, such inflation being a fair inference from or corroborated by an increase of only about three *per cent.* in total mileage which, placed alongside an increase of about fifteen *per cent.* in total cost, also supports a belief that there was fuller inclusion of relevant expenditure, especially on administration, in 1951-52. The improvement shown in both miles and cost per patient seems to be more arithmetical illusion than statistical illumination.

On the other hand, averages and equations for the year 1951-52 for the county of Middlesex and five groups of broadly similar

authorities whose records are on the standard basis provide some interesting comparisons, occasionally dissimilar from expectations. For instance, one would hardly expect the number of patients (348) carried per 1,000 population in Middlesex to be so far above the somewhat surprisingly short range from 233 to 269 in the five groups. Cost per patient (14*s.* 7*d.*) is, however, markedly lower in Middlesex than the average of 17*s.* 3*d.* in thirteen of the more urbanized counties, and the cost per 1,000 population (£254) is not greatly higher than the average of £232 in the thirteen, suggesting that in Middlesex a good bargain is facilitated by circumstances, or has been struck by felicitous policy and management, between high frequency of provision and relatively low cost. The least satisfactory results appear to be within the group of thirteen more urbanized counties; although their density of population is four times greater than the average in forty-three other counties, the average number of miles (8·1) per patient is more than one-half, the number of patients (269) carried per 1,000 population is fifteen *per cent.* higher, cost per patient (17*s.* 3*d.*) is ten *per cent.* higher, and cost per 1,000 population (£232) is twenty-five *per cent.* higher. Whatever operational differences may be inherent in densities of population ranging from 18·5 to 5·2 persons per acre in the three groups of county boroughs, their effects largely cancel out in the process of yielding reasonably near averages of miles per patient (5·4 to 5·7), costs per patient (12*s.* 3*d.* to 13*s.* 5*d.*), and cost per 1,000 population (£151 to £160).

All the averages, equations and unit costs just mentioned are useful as a general guide to the assessment of need and fulfilment thought requisite, and to the quantity of expenditure involved and its volume of production, but not to quality of service as regards, for instance, speed and comfort in the service provided, which would be one of numerous local factors to be taken into account when considering a variety of statistics for any of the 140 authorities detailed in tables A to D of the Ministry's costing return. While too much time and effort is sometimes lavished on elucidating reasons for differences enforced by immutable circumstances, that risk is worth taking more often than not, if only for the satisfaction of replacing guesswork by certainty; investigations based on this costing return will, at least, never be dull, and are likely to be profitable.

THE QUALIFICATIONS OF AN ASSISTANT MAGISTRATES' CLERK

By "AN ASSISTANT"

There are, throughout the country, many men whose duties as assistant magistrates' clerks carry great responsibility and demand the highest standard of integrity and conscientiousness, but whose work is seldom recognized as it deserves because of their lack of status or qualification. They are frequently called upon to act as court clerks and to perform many tasks delegated to them by the clerk to the justices, which require a knowledge of the job and a careful, impartial sense of duty demanded of very few assistants in other fields. And yet, in most other fields, qualifications may be obtained which entitle the holder to apply for a higher position. Such a qualified person has been allowed to demonstrate the extent of his knowledge so that others can immediately assess it and rate him accordingly. Magistrates' clerk's assistants have not this opportunity. They may only qualify by taking the Law Society's solicitors' examination, or they may take a degree in laws. For them, each of these involves a waste of time, expense which they can rarely afford, and the assimilation of a great deal of irrelevant knowledge. Even supposing an assistant were able and willing to take the Law Society's examination, it is not likely that he will remain an assistant clerk for long if successful. Some specialized and recognized diploma is required for assistants who cannot aim for higher qualifications.

Obviously, a fair standard of education is necessary—say either the General Certificate of Education at ordinary level, (School Certificate), or a preliminary examination set by the examining body, in English Language, mathematics, history and geography, at School Certificate level.

Then might come an intermediate examination in magistrates' clerk's office procedure—the issue of process, licensing documents, adoption applications, fees and so on, the division of informations and complaints into their various categories, and a simplified test of the knowledge of court procedure—the basic rules of evidence, and the powers of a court, etc.

The last step would be a final examination consisting of questions on (say) evidence and case law, matrimonial and juvenile court procedure, and a general paper on any matters pertaining to the magistrates' court or the office.

Before taking the final examination, the candidate would have to complete a certain term of service in a magistrates' clerk's office—perhaps five years—and each examination would be taken at an interval of not less than one nor more than two years. The examining body might be the Law Society, or better still a number of clerks to justices elected by the Justices' Clerks' Society.

When the assistant had passed this final examination he could be considered a qualified assistant magistrates' clerk and graded or rated as such. (If he wished to go further, he might be allowed to write a thesis on some aspect of Magisterial Law, and thereby gain an honours pass similar to that obtainable by students for degrees, but this need not be considered at this stage.)

All this would be a means of ensuring that assistants in the more responsible positions possessed the requisite ability. It would also afford an opportunity for advancement without the dragging, dreary necessity for proving themselves over a long period, (most certainly the surest way of crippling ambition and initiative), and it would assist clerks and committees dealing with applications for posts to a tremendous extent. It would be an inducement to assistants to learn more about the work—there are too many advantages to list.

It could be made easy for any assistant to attempt the examinations. Fees need not be high and the student would probably have no text books to pay for—these being to hand in most courts. If he had the will and the ability, he might further both himself and the efficient functioning of the court to which he belongs. It is one class of work in which there are few facilities for the ambitious to better themselves, but surely it is where qualifications are most needed. It is manifest that too little knowledge may be very dangerous in a court, where lives and careers may depend on the reliability of the clerk. Ensure that the assistant knows his job; then may he be contented and so may the public who must rely entirely on the courts to dispense justice and maintain order on their behalf.

RENT TRIBUNAL JURISDICTION

The decision of the House of Lords in *Preston and Area Rent Tribunal* v. *R., Ex parte Pickavance, ante*, p. 446, and *The Times* of June 26, 1953, was an appeal from the decision in *R.* v. *St. Helens and Area Rent Tribunal* [1952] 1 All E.R. 455; 2 All E.R. 9; 116 J.P. 147, 373, the tribunal having been renamed. Thus the House of Lords has at last disposed of a difference of opinion, which appeared four years ago when the Islington, Stoke Newington and Hackney Rent Tribunal had to deal with a problem, upon the relation between s. 11 of the Landlord and Tenant (Rent Control) Act, 1949, and s. 5 of the Furnished Houses (Rent Control) Act, 1946. On that original occasion the chairman of the tribunal and another member, both of them members of the bar, took opposite views upon the point at issue and the tribunal's decision accordingly fell to be given by the third, lay, member, who disagreed with the chairman. We preferred the chairman's view of the law, and said so. The late Mr. Horton-Smith, who was a specialist in these matters, preferred the view of the majority, and we set out the difference at 113 J.P.N. 531 and 563. At 114 J.P.N. 640 our opinion on the legal point was challenged in a Practical Point, where the querist suggested that the obvious intention of the section in the Act of 1949 was that which the lay member of the Islington tribunal had favoured. We felt it our duty to point out in reply that the legal effect of the section had not to be discovered by conjecture concerning its intention, but by scrupulous examination of its language, in the light (of course) of the policy and object of the measure (*per* Lord Wright, in *Liversidge* v. *Anderson* [1942] A.C. 206, p. 261), and we maintained our own view.

The next year a view contrary to ours was authoritatively (for the time being) taken by the Divisional Court in *R.* v. *Folkestone and Area Rent Tribunal, Ex parte Sharkey* [1951] 2 All E.R. 921; 116 J.P. 1, Pilcher, J., doubting, and last year in the Divisional Court: *R.* v. *St. Helens and Area Rent Tribunal, supra*, and again in a majority judgment of the Court of Appeal, Jenkins, L.J., dissenting. The decision just reached by the House of Lords is thus especially gratifying to us, inasmuch as the view we consistently expressed until the *Folkestone* decision, a view in which we were supported by Jenkins, L.J., last year, is now finally determined to be right, and that by an unhesitant and unanimous decision of the House of Lords. The only difference between their lordships and ourselves is that we doubted all along, and said so more than once, whether the language of the section as we felt obliged to construe it produced a result which Parliament would have wished to produce, if it had realized the effect of that language. (We did not, that is to say, feel sure that the new benefit to tenants conferred by s. 11 of the Act of 1949 was in accordance with the wishes of Parliament.) This doubt was, perhaps, most clearly expressed by Denning, L.J., who was not prepared to give effect to the construction of the language used which we thought necessary, because of his conviction that it produced results that could not have been intended. The House of Lords has felt no such hesitation. Lord Porter admitted that whichever reading was preferred would lead to unconsidered and anomalous results, but said that to his mind these cancelled out, and neither party could draw any satisfactory support from displaying the anomalies. He founded his decision on what he regarded as the plain meaning of s. 11 (we ourselves had suggested at 114 J.P.N. 640 that it was not specially obscure) and he saw no sufficient reason for limiting its effect.

This may be a convenient place to speak of the suggestion of which Lord Justice Denning is at the present day the most distinguished exponent in this country, that statutes should, where necessary, be construed so as to give effect to their intention, even if this involves departing from their language. Lord Justice Mackinnon also regretted that he could not do this: *Green* v. *Woodhouse (Samuel) & Sons* [1945] 1 All E.R. 683, at p. 687. As Denning, L.J., reminded listeners and readers in a lately published lecture, the legislature (which in this country is usually the Queen in Parliament, for the laws which most often come before the High Court to be interpreted), settles what the law is to be, and then embodies that settlement in language. The language may fail of its effect: so much must be admitted —*cp.* Lord Simon in *Barnard* v. *Gorman* [1941] A.C. 378, at p. 384. The draftsman is but fallible, although it is not too much to say that precision in the use of language on the statute book has markedly improved in the last few decades. Moreover, not all provisions which find their way to the statute book have been drawn by parliamentary counsel, or even by persons with any skill in using words. Many Bills are introduced in Parliament drafted by other persons, and many provisions which the parliamentary counsel to Her Majesty's Treasury have settled in a Bill have been pulled about in committee and been eventually enacted (often in the last few days or hours of a busy session) without full regard to the meaning of the language substituted. For these and other reasons, there is an attraction about the proposition that the courts ought to construe a statute so as to give effect to what they believe its intention must have been, even though its words mean something different. The difficulty lies in not knowing where to stop. Two judges may take different views about this probable intention, just as they may under our present system of interpretation about the actual and grammatical meaning of a sentence in an Act of Parliament or other document. Are counsel arguing a case to be allowed to read from *Hansard*, for the purpose of showing what a section means? Administrative lawyers may be tempted to look at parliamentary proceedings for this purpose, and it is not infrequent or in any way improper for a textbook writer to print extracts from the speech of the Minister who had charge of a Bill. These cannot, however, be used in legal proceedings: *Assam Railways Co.* v. *Inland Revenue Commissioners* [1935] A.C. 445, at p. 458, and it is not to be presumed that the ultimate mind of Parliament, at the time when a Bill has passed through all its stages in both Houses and been presented for the Royal Assent, is just that state of mind which the Minister in charge, or other author of a particular provision, wished to induce: *see Re R.* [1906] 1 Ch. 730, at p. 733. Parliament might deliberately have departed from the suggestion put before it in the first place; whether it had done so could only be determined by submitting the whole of the parliamentary proceedings on the Bill to scrutiny by the court. This would be impracticable (the language of debate is, anyhow, much less precise than that of the statute which results) and in English law is not permissible: *R.* v. *Hertford College* (1878) 3 Q.B.D. 693; *Davis* v. *Taff Vale Railway Co.* [1895] A.C. 542.

In the world of contract, it is a commonplace that you cannot call extraneous evidence to prove that a written agreement does not mean what it says: *Leggatt* v. *Barrett* (1880) 15 Ch. D. 306, at p. 311; *Re Tewkesbury Gas Co.* [1912] 1 Ch. 1. Even the benevolent interpretation of a will, where the court strives to give effect to the testator's wishes, stops short of admitting evidence to alter the effect of something he has set down in plain language: *Bernasconi* v. *Atkinson* (1853) 10 Hare 345, at p. 354. It is said

that the present English method of construing documents, including statutes, upon which we relied in our above quoted answer at 114 J.P.N. 640, is traceable to Lord Wensleydale, then Baron Parke. In the lecture we have mentioned, Lord Justice Denning expressed a wish that a successor to Lord Hardwicke would arise, to persuade the courts to break away, but we cannot help feeling that in this matter Lord Wensleydale is the safer guide.

SMALL TENEMENTS RECOVERY ACT, 1838—SIGNATURES OF NOTICES ON BEHALF OF A HOUSING AUTHORITY

By AN ASSISTANT SOLICITOR

The article at pp. 292-3 *ante* draws attention to the decision in *Becker* v. *Crosby Corporation* [1952] 1 All E.R. 1350; 116 J.P. 383, that notices to quit given by a housing authority in exercise of its power of management under the Housing Acts, 1936 and 1949, must be signed by the town clerk (or clerk of the council) as required by s. 164 (2) of the Act of 1936.

The main burden of the article is to suggest that this decision would apply equally to a notice of intention to apply for a warrant of possession under the Small Tenements Recovery Act, 1838, in respect of a house held over by a person whose tenancy had been determined by a notice to quit given as aforesaid. Reference is also made to an article at 116 J.P.N. 679-80, which in turn was the continuation of an article at 116 J.P.N. 665.

The articles in 116 J.P.N. set out the relevant passages of the Act of 1838 verbatim. They are as follows:

> S. 1. . . . it shall be lawful for the landlord of the said premises or his agent to cause the person so neglecting or refusing to quit and deliver up possession to be served with a written notice in the form set forth in the schedule to this Act, signed by the said landlord or his agent. . . .
>
> S. 7 . . . the word "agent" shall be taken to signify any person usually employed by the landlord in the letting of the premises or in the collection of the rents thereof, or specially authorized to act in the particular matter by writing under the hand of such landlord. . . .

Section 2, dealing with the method of service of the notice referred to in s. 1 is not set out fully, but the following passage from the summary of s. 2 may be quoted: "The person serving the notice must read it over to the person served and explain its purport and intent."

In fact the reading over and explanation may alternatively be to some person being in and apparently residing at the place of abode of the person to be served, but the distinction is noticeable between the words of s. 1: "It shall be lawful for the landlord or his agent to cause . . . to be served" and of s. 2 "The person serving . . . must read . . . and explain. . . ." On this distinction is based the suggestion at 117 J.P.N. 293, that once he has signed the notice the clerk need not further concern himself, and the reading and explanation may be done by any other person.

Since the form of notice prescribed in the schedule of the Act of 1838 commences with the words "I, ——, Agent to ——, the owner . . ." and s. 2 requires the person serving this notice to read it over to the person who receives it, the better practice seems to be for the same person who signs the notice to deliver it and read it. Where the signatory is a person usually employed in the collection of the rent, this practice is convenient, but it will seldom be so if the signatory is the clerk of the authority. (Perhaps Mr. Græme Finlay suspected some such difficulty when he suggested, at 116 J.P.N. 680, but without regard to s. 164 (2) of the Housing Act, 1936, that the deputy town clerk or an assistant solicitor might be specifically authorized to institute the proceedings.)

A difficulty that does not seem to have been noticed in the article at p. 292, is that a special authority under s. 7 of the Act of 1838 must be "by writing *under the hand of such landlord*": where the landlord is a local authority this must presumably be taken to mean under the seal of the local authority. *Wilson* v. *Wallani* (1880) 5 Ex.D. 155 (distinguishing *R.* v. *Kent JJ.*, L.R. 8 Q.B. 305) suggests that writing under the hand of an agent would not be sufficient. A mere resolution of the local authority (or, as will usually be the case, of a committee acting under delegated powers) even if entered in the minute book and signed (in due course) by the mayor or chairman at the next meeting, will not be "under the hand of such landlord" so as to satisfy s. 7 of the Act of 1838, which is worded very differently from s. 277 of the Local Government Act, 1933. The latter section says that a local authority may, by resolution, authorize certain persons to institute proceedings on their behalf, but unless the suggested form of authorization set out at 116 J.P.N. 680 be authenticated under the seal of the local authority it would fail, it is submitted, to satisfy s. 7.

Incidentally, if sealing would satisfy the requirement of "writing under the hand of such landlord" to constitute an agent *ad hoc*, it would seem equally effective upon the notice itself, which must be "signed by the said landlord . . ." under s. 1, although at 117 J.P.N. 293 it is said that this "is impracticable where the owner is a local authority."

Finally it is submitted that the whole of the apprehended difficulties disappear if the apparent conflict between s. 7 of the Small Tenements Recovery Act, 1838, and s. 164 (2) of the Housing Act, 1938, is regarded in the light of the maxim "*generalia specialibus non derogant*." Clearly that maxim had no application in the case of *Becker* v. *Crosby Corporation*, *supra*, because in that case there was no special provision applicable to the notice to quit, and it fell only within the Act of 1936. In the case of a notice to which the very specific and detailed requirements of the Small Tenements Recovery Act apply, and which moreover has its origin under that statute (although extended by the Act of 1936 in respect of the limit of rent payable), it is submitted that the general provisions of s. 164 of the Housing Act do not derogate from those special provisions as to signature. If it were otherwise, s. 167 of the Housing Act would enable the notice under s. 1 of the Small Tenements Recovery Act to be served by registered post.

[*See* our article at p. 441 *ante*.—*Ed., J.P. and L.G.R.*]

HAD AND RECEIVED

In a claim for money had and received
One is always particularly relieved
If the Defendant has actually retained
Some of the money he obtained.

J.P.C.

PLANNING PERMISSION—CONDITIONS WHICH CANNOT PROPERLY BE IMPOSED

By LORD MESTON, *Barrister-at-Law*

An application for planning permission may be granted unconditionally, or subject to conditions, or it may be refused. The conditions which may be properly imposed on the grant of planning permission cover a variety of matters, and are almost too numerous to mention. The most common of these conditions is one which imposes a limit of time on the proposed development. Other types of condition commonly imposed deal with such matters as the hours of operation of a particular business, the days of the week on which a particular activity, *e.g.*, motor-cycle racing, may be carried on, the nature and extent of the machinery that may be used on certain premises, the approval of further detailed plans, the subject of access, and the provision of adequate sewage facilities. Indeed, anything which contributes to safety, public health, and good neighbourliness may properly be the subject of a condition attached to the grant of planning permission. But there are certain conditions which cannot be properly imposed. Here we must refer to that admirable document called the "Bulletin of Selected Appeal Decisions," which is published at intervals by the Ministry of Housing and Local Government (formerly by the Ministry of Town and Country Planning). The following decisions of the Minister, on appeal made to him from the local planning authority, deal specifically with conditions which the Minister has considered to be improper.

It has been held that an applicant for planning permission cannot be required to enter into an agreement which will give the local planning authority rights and remedies outside the Town and Country Planning Act, 1947. For example, the corporation of a city was approached by the owners of an industrial undertaking in the city for consent to carry out some alterations and extensions to factory premises. As a condition of consent the corporation asked the owners to enter into an agreement binding them to observe certain obligations of a general character, relating to the display of advertisements and the use of smokeless fuel. The owners refused to do so and appealed to the Minister against the imposition of these conditions, contending that the effect of the suggested agreement would be to give the corporation rights and remedies outside the Town and Country Planning Act. The Minister upheld this contention, and ruled that the corporation was not entitled to require the applicants to enter into such an agreement. The Minister then proceeded to consider the proposed development on its merits, and decided to allow the required alterations and extensions to the factory to be carried out. The Minister was further of the opinion that it was not necessary to impose conditions with regard to the display of advertisements and the use of smokeless fuel. The result was that the Minister allowed the appeal unconditionally. In the above case, it will be observed that the corporation, in its capacity as local planning authority, would have been quite in order in determining the application within the ambit of the Town and Country Planning Act, and in attaching such conditions as they considered desirable on granting consent to the proposed development. But that was not what the corporation did. They asked the applicants to enter into an agreement, claiming that the agreement would have the effect merely of reinforcing the existing Town and Country Planning Act and byelaws. That in itself was an objectionable way of dealing with the matter, but what was even more objectionable was the fact that on any breach of the agreement the corporation would have had rights and remedies against the applicant which were outside the rights and remedies provided by the Town and Country Planning Act. Looking at the matter in another way, the corporation did not attempt to decide the application for permission on its planning merits, and in effect they acted without jurisdiction.

As we have already noted, one of the most common forms of condition which may be imposed on the grant of planning permission relates to the period of time during which the proposed development may be allowed. For example, permission may be granted to erect a building on condition that it be removed at the end of twenty years. It has been held, however, that where a building has been constructed, and is regarded as a permanent structure, the local planning authority are not entitled to regard it as a temporary building and to attach a time limit to its continuance on that basis. For example, the applicant for permission constructed on his own land a building of timber and weather-board with a felt-covered roof, on concrete foundations and with a concrete floor, to serve as a workshop and store in connexion with his business of motor-cycle engineer. The building had been accorded full byelaw approval, without any use of the powers of s. 53 of the Public Health Act, 1936. There was no objection to the change of use of the land or to the design or elevation of the building, but the local planning authority limited their approval of the building (as if a temporary building) for a period of five years, and stated that their reason for imposing this limitation was to ensure that the building should be maintained in a proper state of repair. On appeal, the Minister held that a limitation of the period of consent could not properly be imposed for this reason. The Minister then went on to say that as there was no evidence to show that the proposed development would conflict with planning requirements he would allow the appeal without limit of time. In the above case it will be observed that the local planning authority proposed to treat a structure, which was in fact a permanent structure, as if it were a temporary structure, and on that basis proceeded to attach a time limit on its continuance in order, so to speak, to keep an eye on its maintenance in a proper state of repair. The Minister, however, took the correct view of the structure, regarding it as of a permanent nature, and then went on to consider a most important planning consideration, namely, whether the building in question would conflict with any plans for the reasonably early re-development of the area in which the building was situated. Being of opinion that no such conflict would arise, the Minister was satisfied to allow the proposed development unconditionally.

A requirement that an owner should divest himself of part of his land, as a condition of being granted consent to developing another part of his property, is improper. Thus, the applicants wished to develop a building estate of some 288 houses on land adjoining an avenue. In granting consent the local planning authority imposed a condition that the developers should convey to the local authority free of charge, other than legal costs, a piece of land at the rear of the avenue (being part of the land which the developers had purchased) which the local authority undertook to maintain as an open space. On appeal, the Minister was of opinion that such a condition was improper and could not be imposed and must be discharged. The appeal was accordingly allowed. Of course, in such a case, it is quite in order for the local authority to exercise any powers of compulsory purchase that are open to them, but that is a totally

different matter from trying to compel a developer virtually to hand over his property, or any part of it, to the local authority as a condition of consent to planning permission for the proposed development.

Requiring a payment of a sum of money as security for the fulfilment of a condition is improper and cannot be imposed. The applicants sought consent for the opening of a new sand and gravel working. Consent was granted by the local planning authority subject to a number of conditions, one of which was that the applicants should pay a stipulated annual sum of money to the local authority as security for the final fulfilment of the aforesaid conditions. On appeal the Minister held (1) that the Town and Country Planning Act itself gave the authority adequate powers to enforce the fulfilment of conditions attached to the grant of planning permission; and (2) that, apart from this, the imposition of the above condition about giving security was improper as the general rule of law in such matters is that no money can be demanded from any person except on a clear and distinct authority laid down by statute. There was certainly no such authority to be found in the Town and Country Planning Act. The Minister accordingly allowed the appeal and discharged the condition.

A condition requiring the suppression of existing development cannot be properly imposed. In this connexion specific reference must be made to s. 14 of the Town and Country Planning Act, 1947. By subs. (1) of that section it is provided in terms that, in considering applications for permission to develop, the local planning authority must have regard to the provisions of the development plan and to any other material considerations. And then subs. (2) goes on to say "Without prejudice to the generality of the foregoing subsection, conditions may be imposed on the grant of permission to develop land thereunder—(*a*) for regulating the development or use of any land under the control of the applicant (whether or not it is land in respect of which the application was made) or requiring the carrying out of works on any such land, so far as appears to the local planning authority to be expedient for the purposes of or in connexion with the development authorized by the permission . . . (*b*) . . . ." The applicants carried on business as pickle and sauce manufacturers on a site within the Greater London area. Their works were damaged during the war and they were refused permission to rebuild them. The applicants then informed the local planning authority that they were acquiring a new site and that they would later apply for permission to erect a factory there, to which they would remove their business, and in the meantime they applied for permission to erect a temporary building on the old (*i.e.*, the war-damaged) site to house their stock of spices and condiments. The applicants also said that they would not look for compensation in respect of this temporary building when they vacated their existing premises. The local planning authority thereupon granted permission for the erection of a condiment store on the old site for a period limited to two years. Sometime later the applicants sought permission to erect a pickle factory and storage building on the new site, and this was granted subject to the condition that the applicants' existing works on the old (*i.e.*, the war-damaged) site should cease not later than three months after the new factory buildings were brought into permitted use. On appeal against this condition, the Minister took the view that the condition was not one that could properly be imposed under s. 14 (2) (*a*) of the Town and Country Planning Act, 1947, since, although the condition sought to regularize the future development of other land in the appellants' control, it also attempted to suppress existing development by depriving the appellants of their right to use their existing factory. Suppression of an existing use of this kind could only be achieved by an order under s. 26 of the Town and Country Planning Act, 1947 (which empowers the local planning authority, in the interests of the proper planning of their area, to cause existing uses to be discontinued and existing works to be removed), in which event compensation may be claimed under s. 27 of that statute. The result was that the Minister discharged the condition and allowed the appeal. By way of comment it may be said that at first sight the wording of s. 14 (2) (*a*) of the 1947 Act appears to be wide enough to give the local authority power to interfere with the use of any part of the applicants' land, but s. 26 of that statute is so framed as specifically to deal with existing authorized uses and is subject to s. 27 which gives a right to claim compensation. In the above case the applicants' user of their old (*i.e.*, war-damaged site) was duly existing *and* authorized at the date when they applied to erect a factory on the new site. The right to attach conditions to the grant of planning permission under s. 14 of the Act of 1947 cannot embrace a totally separate power to order the discontinuance of existing authorized users or works, as such power comes within the exclusive ambit of s. 26 of the statute.

In conclusion it may be said that in none of the above cases was there the slightest suggestion of bad faith on the part of the local planning authority, in imposing conditions which subsequently the Minister found to be improper. The examples we have given merely illustrate the necessity for exercising vigilance in seeing that conditions imposed on the grant of planning permission are proper *planning* conditions, and are authorized by the Town and Country Planning Act, 1947, itself, and come strictly within the ambit of that statute.

TREASURERS IN CONFERENCE

The sixty-eighth annual general meeting and conference of the Institute of Municipal Treasurers and Accountants (Incorporated) was held at Scarborough from June 17 to 19. About 1,250 delegates from all parts of Britain were present, representing not only local authorities but also the electricity, gas and hospital boards of their respective areas.

Delegates were given an official welcome by the Mayor of Scarborough, who referred to public concern at the rising trend of rates, emphasized the vital need for strict vigilance and economy in order to limit further increases, and referred to the important part which could be played in achieving this end by financial officers. Evidently the Institute Council were concerned also for much of the conference programme was allocated to a consideration of rate increases, both present and future, and the possibilities of administrative and political action on the problem.

The first paper was the Address given by the President, Mr. C. H. Pollard, O.B.E., F.I.M.T.A., F.S.A.A., F.S.S., the City Treasurer of Kingston-upon-Hull, and as is customary he touched upon many matters of major importance to local government. In this Coronation year his thoughts went back to the first Elizabeth and to the introduction of rating by the Poor Relief Act, 1601. It is interesting that according to that Act money was "to be gathered out of the parish, according to the ability of the same parish." This ideal remains fundamentally the same today, but judging from the recent outcry about

the Exchequer Equalization Grant, many think that it is still far from being realized. The President went on to refer to measures such as derating and the elimination from rating of the nationalized electricity and railway services, which he considered have restricted the sources of rates in a manner quite contrary to the best interests of local government. Local government required adequate financial resources on an expanding basis such as the government enjoys in relation to income tax. Only in this way could we avoid greater government grants and consequently greater government control over local administration. Mr. Pollard did not agree that a wise decision was made when valuation powers were transferred to the Inland Revenue : he thought that if the job of revaluation had been left with the local authorities it would have been completed by now. At the same time he recognized the force of the argument that unsatisfactory assessment standards in different areas made inequitable the distribution of the Equalization Grant. Mr. Aneurin Bevan's remedy was to take away local powers but Mr. Pollard does not agree : his view is that the difficulty could have been overcome by giving more powers of direction to the Central Valuation Committee.

On the general question of expenditure burdens the President quoted figures showing a rapid rise in public local expenditure from £393 millions in 1938/39 to £743 millions in 1950/51. He did not, however, relate these figures to the total national income or compare them with rises in national taxation over the same period and this omission was referred to in the course of the subsequent discussion by Mr. J. Ruscoe, M.A.(Admin.), B.Com., F.I.M.T.A., the Bradford City Treasurer. For instance, national income in 1938 was £5,253 millions and by 1950 had risen to £11,970 millions : put in another way the value of £1 has gone down since 1938 to 8*s.* 6*d.* Nevertheless, local services are now largely financed from central funds and there are no grounds for complacency about taxation, as the table following demonstrates :

Proportion of a Man's income from work and property taken for taxes levied by the Central Government

	Year 1938 000's	*Year* 1951 000's
1. Personal income from work and property	£4,676	£10,705
2. Taxes on income	£306	£1,907
3. Indirect taxes on personal consumption	£543	£1,559
4. Percentage of income taken in tax :		
(*a*) taxes on income	% 6½	17¾
(*b*) indirect taxes	%11½	14½
(*c*) direct and indirect taxes	%18	32¼

Mr. Pollard quite rightly stressed the necessity of getting full value for money spent, for example, he asked whether indiscriminate subsidies for all council house tenants and expensive provision of old people's community homes were necessarily the best ways of dealing with these problems. He also viewed with concern the tremendous capital expenditure of the post war period, particularly in connexion with housing, town planning and education, and wondered whether reductions were possible, for example, in the standard of school building.

The vexed question of the Exchequer Equalization Grant and the method of its distribution was also referred to by the President. He said that the majority of authorities directly concerned were satisfied with the present basis of distribution but that there was a strong body of opposition opinion, the latter inclining to the view that all authorities should share in the distribution. The Report of the Working Party which has been examining the present method of distribution has now been published, and we understand that the Government have asked the local authority associations to consider it, hoping no doubt that agreement on redistribution can be achieved. Mr. Pollard says that any redistribution will call for a high degree of statesmanship on the part of the local authorities, and if the Conference discussion is a straw accurately indicating the direction of the wind the statesmanship available is going to be lamentably inadequate for the task, because very definitely speakers in the debate on the Address seemed concerned about revision only as it might affect their own authorities, and their arguments were limited and biased accordingly.

On Thursday afternoon Mr. Walter Nuttall, F.I.M.T.A., F.C.W.A., Borough Treasurer of Darlington, introduced his paper entitled " The Quest for Efficiency." This paper followed the President's remarks on rising public expenditure by examining ways in which local government could tackle the problem. The speaker rightly made the point first that the tendency in local government to think that inefficient methods were imposed from above was wrong : inflexibility and complication of administration can emanate from the county and town halls as well as from Whitehall.

On the side of policy a plea was made for a more thorough inquiry about the worth and usefulness of suggested new projects, for forward planning, and for the avoidance of over specialization. It was truly observed that far more money could be saved (or wasted) at the policy determination stage than at any other time.

Committees came in for comment, it being said that lay members are often themselves partly to blame for the mass of reports which they receive. We agree, and know that this sometimes occurs through a misguided determination " not to be run by the officials "—an attitude which may eventually progress to not letting the officials decide even the most minor administrative matters. Officials themselves are not blameless either, and their reports could often be better considered and a great deal shorter. Our remedy is to urge a constant attack upon the empire builders, whether members or officers.

On internal organization Mr. Nuttall had nothing startlingly original to say but he did reiterate the virtues of O and M, of costing and the inquiring mind in the concluding section of a pleasant, persuasive introductory speech.

A discussion on future rate levels was initiated by Councillor Beattie, J.P., Chairman of Finance Committee, Wolverhampton, in his paper on The 1963 Estimates. Forward looking is evidently a well established practice at Wolverhampton ; we recall that in 1939 Mr. William Adams, the Borough Treasurer, presented a paper to the conference on problems arising from a probable decline in the population of the country. Mr. Beattie wants local authorities to prepare ten year budgets, decide on maximum future expenditure, and allocate it between services. He estimated that over the whole country by 1963 rates would increase by 9*s.* 0*d.* (ignoring Equalization Grant) and taxation by £235 millions.

Long term forecasts whether of population or expenditure trends are difficult to make accurately. We have seen many falsified and ourselves would not wish to use figures of this kind in the way that Councillor Beattie suggests. But as indicating broadly the shape of things to come they are valuable, and if put before the public may assist decisions about the level and extent of services to be provided in the future.

Sandwiched between these general discussions was a paper on a particular matter of importance. This was given by Mr. W. O. Hart, C.M.G., B.C.L., M.A., the General Manager of Hemel Hempstead Development Corporation, and dealt with the financial problems of new towns. Mr. Hart pointed out that finance for development was provided by the Treasury but

that eventually repayment was expected when the Corporation was wound up by the sale of its assets to local authorities and statutory undertakers. He did not agree with those who contended that new towns could only show heavy losses: in the early stages of development the least remunerative types of property had been built first and only when each town was complete would it be possible to assess the financial results. The speaker also answered criticisms about the high rents charged, indicating that local authorities were much more favourably placed than the new town corporations in regard to housing. For instance, the local authorities had pre-war houses to bring down the pooled rent figures and a rate fund to fall back on for additional contributions to the Housing Account.

The Conference concluded with the investiture of the new President, Dr. A. H. Marshall, B.Sc. (Econ.), Ph.D., F.I.M.T.A., F.S.A.A., City Treasurer of Coventry.

THE NUFFIELD FOUNDATION

TEN-YEAR REVIEW 1943-1953

The Nuffield Foundation was established in April, 1943, and the end of its first ten years seemed to the Trustees an appropriate occasion to review the policies followed and the grants made during this early period of the Foundation's existence. The resulting report—in a book of fifty pages—is of general interest as a record of what the Foundation has done in " the advancement of health and social well-being." The policies and grants within the United Kingdom are grouped under five main headings—medical, biological, physical and social research, and the care of old people. There is also a separate programme of training fellowships and scholarships covering the Commonwealth. The priority given in its trust deed to " the advancement of health " committed the Foundation first to a policy for the study, promotion and maintenance of health. In connexion with child health, the Foundation made a grant of £100,000 to the University of London to promote teaching and research and other grants totalling £12,420 for projects connected with the birth, development and health (including mental health) of children. Subsequently grants of some £165,000 were made for research into matters concerning industrial health. Dental health research was also assisted to a total of £90,000. An interesting grant of a different nature was one for a survey of the health of undergraduates at Oxford so as to obtain knowledge about the physical and mental welfare of an important group of young adults. Considerable research in rheumatism has been made possible by a gift of £450,000 by Captain Oliver Bird, M.C. The work done in this connexion is explained in detail. Other activities of the Foundation include research in the biological and physical sciences, of which examples are the provision of a reflecting microscope at Bristol and a radio-telescope at Manchester. The Foundation's interest in the social sciences—" the scientific study of human society and of man in relation to it "—is shown by a grant to enable the study of the problem of a changing industrial area such as West Durham. Other grants in this field include help for the development of promising administrators and of " backward " working girls ; and help to societies of scholars and new scholarly journals devoted to social research.

CARE OF OLD PEOPLE

We have referred previously to the substantial help given by the Foundation in connexion with the care of old people or as described in the trust deed " the care and comfort of the aged poor." It is pointed out in this connexion that the improved health of the increasing number of old people means not only that many more survive to become old, but that the potential working life is growing longer and real old age is being gradually postponed. So there are two principal problems : first, that of caring properly for those old people who can no longer care for themselves ; and, secondly, that of enabling the large majority to carry on, for their own sake as well as that of the community, living independently and whenever possible still contributing to the common productive effort. The Foundation, mainly through the National Corporation for the Care of Old People, has done much by grants to voluntary organizations to encourage and assist the provision of homes and welfare services for old people ; and, by experiment and demonstration, to influence the growing amount of official provision. Now that an increasing number of homes, including a few for the infirm, are being set up, the National Corporation is beginning to think in terms of total provision for old people, and is starting to try out its ideas in two areas, to see how completely the various kinds of services can be arranged to give adequate help as and when it is needed. In the field of research the Foundation has been, and is still financing research by experimental psychologists at Cambridge into the way and rate at which skill declines with age—and ultimately into ways in which the middle-aged and elderly can be helped to continue or change to tasks better designed to take account of any failing or compensating skill. Starting in the laboratory, so as to establish the fundamental aspects of the problem of skill, the investigation is now moving into industry and agriculture to see the problems in practice and to suggest practical ways in which the demands of this machine-age can be better adapted to human faculties and functions. The benefits of such research, if it succeeds, will not be confined to the elderly but should have lessons for the improvement of all conditions of work in modern industry. For, as it is satisfactory to learn from the report, the findings so far show that there is no definite stage at which old age can be said to begin ; some kinds of skill start declining in the twenties and thirties. So, scientifically as well as socially, it is improper to regard and treat old people as something apart. Like the rest of the community they are entitled to their share of what the community can provide, of happiness and congenial work, and of help in sickness and need.

GENERAL ACTIVITIES

Finally, the report describes the activities of the Foundation in connexion with the award of fellowships and scholarships involving a total expenditure of £611,178, both in United Kingdom schemes and in those applying to the Dominions and Colonies.

Those who drafted the report deserve congratulations for producing such an interesting document written in the lucid style which we have come to expect from the Foundation's publications. It shows a noteworthy achievement of work which, in many respects, would not have been done if a rich man with vision like Lord Nuffield had not felt it to be a duty to make the money available. The work of the Foundation must have given him much pleasure and he clearly takes a deep personal interest in what is being done through his generosity. It is a pity that more of the rapidly decreasing number of rich men and women do not follow his example, but some may say this is at the expense of the National Exchequer by a reduction of liability for death duties. We support Lord Nuffield's attitude.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., and Romer, L.J.)

BIRCHALL *v.* WIRRALL URBAN DISTRICT COUNCIL

June 19, 1953

Housing—Demolition order—House "unfit for human habitation"—Sanitary defects and non-compliance with local byelaws—Housing Act, 1936 (26 *Geo.* 5 *and* 1 *Edw.* 8, *c.* 51), *s.* 11 (4), s. 188 (4).

APPEAL by local authority from Birkenhead County Court.

In 1950 B converted a detached timber framed building, which had been used for storage purposes on a camping site, into a bungalow consisting of one room, which was used for living and sleeping purposes, and a scullery. The building had no readily accessible water supply and did not comply with several byelaws, and the cost of repairs and making the house comply with the byelaws was estimated at over £500. In January, 1953, the council made a demolition order under s. 11 (4) of the Housing Act, 1936. B appealed to the county court under s. 15 (1)(*d*), and the county court judge quashed the order on the ground that the house was fit for human habitation. The council appealed and contended that the judge was bound to confirm the demolition order because, having regard to s. 188 (4) of the Act of 1936, the house was unfit for human habitation by reason of its sanitary defects and its falling short of the provision of several byelaws in operation in the district.

Held: the only question was whether, after taking into account all the relevant circumstances, including those specified in s. 188 (4), the house was fit or unfit for human habitation; the requirements of statutes and byelaws were relevant for consideration, but they were not decisive on the one question which the county court judge rightly posed to himself for decision; and, therefore, his decision was right and the appeal must be dismissed.

Appeal dismissed.

Counsel: *E. Steel* for the local authority; *T. H. Pigot* for the owner.

Solicitors: *Percy Hughes & Roberts*, Birkenhead; *Field Roscoe & Co.*, for *Berkson & Berkson*, Birkenhead.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

(Before Sir Raymond Evershed, M.R., Birkett and Romer, L.JJ.)

GREGORY *v.* FEARN

June 24, 1953

Sunday Observance—Offence—Estate agent—Contract to employ agent made on a Sunday—Sunday Observance Act, 1677 (29 *Chas.* 2, *c.* 7), *s.* 1.

APPEAL of plaintiff from a decision of JUDGE CAPORN at Nottingham County Court, that a contract for the employment of an estate agent made on a Sunday was void. On appeal,

Held: an estate agent was not a "tradesman" within the meaning of s. 1 of the Sunday Observance Act, 1677, and, therefore, a contract to employ such an agent entered into on a Sunday did not constitute an offence under the section and was not void.

Counsel: *T. R. Heald* for plaintiff. The defendant did not appear.

Solicitors: *Corbin, Greener & Cook*, agents for *Huntsman, Donaldson & Tyzack*, Nottingham.

(Reported by F. Guttman, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Parker and Donovan, JJ.)

R. *v.* SIMONS

July 6, 1953

Criminal Law—Sentence—Outstanding charge—Taking into account—Driving while disqualified—Offence court has no jurisdiction to try—Offences relating to motor vehicles.

APPLICATION for leave to appeal against conviction.

The applicant pleaded guilty at Leicester City Quarter Sessions to taking a motor vehicle without the owner's consent, receiving stolen property, and dangerous driving. An offence of driving a motor vehicle while disqualified was taken into consideration, and he was sentenced to three years' corrective training. The applicant had been committed for trial in respect of the last named offence, but a count for the offence was not included in the indictment as the offence was one triable on indictment only if the prisoner elected, under s. 25 of the Magistrates' Courts Act, 1952, to go for trial by jury, and there was some doubt whether the applicant had exercised the option.

Held, (i) that the proper course would have been to include in the indictment a count for the last mentioned offence, to call evidence on the question whether the applicant had exercised the option, and, if the recorder came to the conclusion that he had not, for him to quash the count; (ii) the last mentioned offence ought not to have been regarded as an offence proper to be taken into consideration (*a*) because it was doubtful whether quarter sessions had any jurisdiction to try it; (*b*) because of the principle already laid down that offences in relation to the driving, insurance, etc., of motor vehicles ought not to be taken into consideration in passing sentence on some other charge, but should be left for separate prosecution, inasmuch as the law required that certain steps with regard to endorsement of licence and disqualification for holding a licence should be taken, which could be done only if there was a conviction and not if the charge were merely treated as a matter to be taken into consideration.

Application refused.

No counsel appeared.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Before Lord Merriman, P., and Collingwood, J.)

KEMP *v.* KEMP

June 10, 11, 1953

Divorce—Desertion—Constructive desertion—Association by husband with woman not resulting in adultery—Revival of condoned adultery. Justices—Husband and wife—Majority decision—Need of dissenting justice to give reasons.

The parties were married in 1945. In 1949 the husband committed adultery, but the wife forgave him and they continued to live together as man and wife. Towards the end of 1952 the husband began to stay out late at night, coming home two or three times a week between 3 *a.m.* and 8 *a.m.* The husband knew that this conduct would arouse the wife's suspicions, but the only explanation that he gave at first was that he had been out with friends. Later he said that there was a woman, but that there was nothing wrong in the association and that she, the woman, was going away after Christmas. The wife went with the husband's consent to spend Christmas with relatives and did not return. On a summons by the wife alleging that the husband had deserted her,

Held: although the husband's present association with the other woman was not found to have been adulterous, it was sufficient in law to revive the condoned adultery in 1949, and it was serious enough to justify the wife in withdrawing from cohabitation and to found a charge of desertion.

Observations of Sir J. P. Wilde in *Winscom* v. *Winscom & Plowden* (1864) (3 Sw. & Tr. 382), applied.

Per Lord Merriman, P.: I do not think that, even if it is made clear at the hearing or is expressly stated at the time when the finding is made, that the decision of the justices is not unanimous, it entitles parties to demand that the dissentient justice or justices shall furnish a written statement of the reasons for their dissent, and I certainly deprecate encouraging the establishment of any such practice.

Counsel: *Baskerville* for the wife. The husband did not appear.

Solicitors: *Biddle, Thorne, Welsford & Barnes*, for *Denis Lyth*, Leeds.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

LAW SOCIETY FINAL EXAMINATION, JUNE, 1953

[*By courtesy of the Law Society, we are able to reproduce below the Questions for the Final Examination, June*, 1953, *as held on Wednesday, June* 17 (2.30 *p.m. to* 5.30 *p.m.*]

VI.—(C) THE LAW AND PRACTICE OF MAGISTRATES' COURTS, INCLUDING INDICTABLE AND SUMMARY OFFENCES, MATRIMONIAL JURISDICTION, BASTARDY, JUVENILE COURTS, TREATMENT OF OFFENDERS, CIVIL JURISDICTION, COLLECTING OFFICERS' DUTIES, THE ISSUE OF PROCESS, EVIDENCE IN CRIMINAL CASES, AND LICENSING.

61. R, aged twenty-five years, is convicted by your justices of—(*a*) larceny of a motor car, (*b*) driving the motor car while disqualified for holding a driving licence, and (*c*) using the motor car on a road without being insured against third party risks. On hearing his previous record, the justices form the opinion that R appears a suitable subject for corrective training. In view of this opinion, what decision would you advise them that they could make in each charge?

62. Jones is convicted of exposing his person with intent to insult a female, contrary to Vagrancy Act, 1824, s. 4. This Act provides only for a penalty of three months' imprisonment. The justices, while desiring to punish Jones, are loth to send him to prison. They do not consider him a fit subject for probation. How would you advise them?

63. Smith is convicted at quarter sessions and placed on probation under the supervision of the probation officer for X. The probation

officer reports to the justices for X that Smith has been convicted of a further offence for which he was fined. The next quarter sessions will not be held for two months. What action may be taken by the justices and what procedure will enable Smith to be brought before quarter sessions?

64. Mrs. Robinson issues a summons against her husband, complaining that he has deserted her since January, 1952. On the hearing, the following facts are proved: In January, 1952, the defendant left his wife in the belief that she had committed adultery. Subsequently, he commenced divorce proceedings on the grounds of adultery. Mrs. Robinson defended the proceedings and denied the allegations. In February, 1953, the husband's petition was dismissed. In March, 1953, Mrs. Robinson invited her husband to resume co-habitation but this offer was refused. On the hearing of the summons for desertion the defendant stated that he still believed that his wife had committed adultery prior to their separation in January, 1952. Advise the justices whether on these facts, the wife has established her case.

65. Ada Brown obtained an affiliation order against James Simpson. Subsequently, the girl's mother informs the collecting officer that Ada has died leaving the child in her care. She inquires whether she may continue to collect the maintenance paid to the collecting officer by James who is unaware of Ada's death. How should she be advised?

66: Section 1 of Petroleum (Consolidation) Act, 1928, provides that petroleum spirit may not be kept unless a petroleum spirit licence is in force under the Act, authorizing the keeping thereof. A limited company, with depôts throughout the country, is prosecuted for an alleged contravention of the section. The prosecution proves the keeping by the defendants of petrol within the jurisdiction of the court but calls no evidence regarding the non-existence of a licence. The defendants' solicitor submits that the company has no case to answer. What advice should the justices be given?

67. The licensee of the Oak Tavern has died having made a will appointing his son as his executor and sole beneficiary. Advise the son whether he may legally keep the premises open for the sale of intoxicants.

68. A newly appointed justice for a borough bench is also a member of the borough council and of the corporation finance committeee. Should he adjudicate in the following cases: (*a*) A prosecution by the borough weights and measures inspection in respect of an offence against the Weights and Measures Act, 1878? (*b*) A prosecution by the borough police for larceny of timber by a soldier from the corporation stores? (*c*) A summons for desertion brought against her husband by the wife of a clerk in the office of the borough treasurer? (*d*) A prosecution by the borough police against a fellow councillor for larceny? Give reasons for your answers.

69. What provisions should an approved school order contain determining the liability of a local authority to contribute towards the maintenance of the child or young person to whom the order relates? What further order may be made against persons liable to contribute to the support of the child or young person?

70. P is prosecuted because his son Thomas, aged ten years, fails to attend school regularly. On the hearing, the defendant pleads that Thomas persistently truants. What steps may the justices take (*a*) to punish P and (*b*) to ensure that Thomas attends school regularly in future?

71. What are the duties and powers of justices on an application for a warrant of commitment for non-payment of rates following failure of distress?

72. Draw a complaint for a bastardy summons in respect of a child aged two years. Use imaginary details.

VI.—(B) LOCAL GOVERNMENT LAW AND ADMINISTRATION

61. The Blackacre Urban District Council would like their district to be divided into wards. How is this done?

62. Who may vote at the election of a county councillor?

63. Outline briefly the principles governing the valuation of dwelling-houses for rating purposes.

64. The District Auditor says to you—"You, as an officer of the Loamshire County Council, are responsible for the fact that that Council have made a payment of £100 which they had no right to make. When I complete the audit in a month's time I propose to surcharge the sum of £100 on you. What action can you take to avoid paying the £100 (*a*) now, (*b*) after the surcharge has been made?

65. By a local Act, which supersedes all general powers dealing with the subject, the Whiteacre Corporation are empowered (*a*) to set up refuse dumps at such points within the borough as they think fit, and (*b*) to erect an incinerator on a plot of land shown on the deposited plan. Snooks complains that a refuse dump and the incinerator set up under these powers are so close to his house that they constitute a nuisance, although he admits that they are planned and managed with all reasonable care. Advise him.

66. A district council are satisfied that the whole of an individual house in their area is unfit for human habitation. What action may they take?

67. (*a*) For what persons are county councils and county boroughs required to provide accommodation under the National Assistance Act, 1948? (*b*) To what extent must such persons pay for the accommodation?

68. What restrictions are there on the employment of children and young persons?

69. Green, a builder, wishes to erect a number of houses on the outskirts of a village. The Aqua Water Company, the statutory water undertakers for the area, have a main some distance away. How may Green get a water supply to his estate?

70. The Loamshire County Council, when issuing a licence to the Cinema De Luxe, Loamton, attach a condition that no film given an "X" Certificate by the British Board of Film Censors shall be shown while a person under sixteen is present. Is this condition valid?

71. In what circumstances may a member of a rural district council receive payment from the council in respect of his activities as a councillor?

72. In what cases may a local authority make an enforceable contract without the use of their common seal?

INSTITUTE OF WEIGHTS AND MEASURES ADMINISTRATION SIXTY-FIRST ANNUAL CONFERENCE AT SCARBOROUGH

The Annual Conference of the Institute, held at Scarborough on June 23, 24 and 25, was well attended by representatives of local authorities and by members. Through the kind permission of the Corporation of Scarborough the meetings were held in the Spa.

At the opening of the first day's meeting delegates and members were welcomed by the Mayor of Scarborough, Councillor N. Walsh, M.B., Ch.B. Following the welcome the first session, under the chairmanship of Councillor Joseph Angle, City of Newcastle upon Tyne, heard a paper entitled "Reflections on the Theory and Practice of Weighing," read by S. Abbott, Esq., A.M.I.Mech.E., Chief Examiner, Board of Trade, Standards Department. The first part of the paper, after illustrating the need for accurate and uniform means of weighing, showed the growth of the practice and gave a description of the basis of the Imperial System. Then followed a description of the evolution of the modern weighing and measuring machine with comments on the inadequacy of the present regulations when applied to such complicated and highly technical appliances. The paper concluded with a survey of the ever-increasing system of pre-weighing and pre-packing of articles in common consumption and put forward for consideration the question as to whether future enforcement should not be divided; a new system to apply not to appliances used but to commodities weighed thereon and the old system to apply to those appliances used for immediate sales to the public.

The lively discussion that followed indicated the great interest aroused. In general the opinions expressed were in favour of retaining accuracy and not to increase permitted errors for the sake of speed in weighing. Local authorities and their inspectors being the guardians of the public in matters of weight and measure should retain power of verification on all machines in use for trade.

On the morning of the second day the proceedings opened with the installation of the Chairman for 1953-4, Mr. S. A. Wiggins, London C.C., and then divided to hold two ancillary meetings. The Food and Drugs section heard a paper entitled "Some Aspects of the Modern Range of Food and Drugs Work" written by Mr. J. A. O'Keefe, B.Sc. (Econ.), LL.B., Barrister-at-law, F.I.W.M.A., Chief Officer of the Public Control Department, Middlesex C.C., and read by P. Burton, Esq., Deputy Chief Officer. In the discussion that followed many points were dealt with including the difficulties encountered in sampling for vitamin content and sampling tablets and such units as meat pies.

In the second meeting a paper was read to members who administer the Petroleum Acts entitled "Some Thoughts on Air Testing of Storage Tanks" by Mr. T. W. Bache, of the firm of Bailey and Mackey, Ltd. The possible sources of errors and the corrections necessary for temperature and barometric pressure changes were the main topics of the discussion that followed. Although the paper limited the discussion to pressure tests only the advantages of dip-test (ullage) were also discussed.

On the third day the proceedings opened with the investiture of new Fellows of the Institute. The chair was then taken by Councillor J. W. Hardcastle of Scarborough, and a paper entitled "Volumetric Displacement Meters for Bulk Liquids" read by R. E. Rawsthorne, Esq., M.I.W.M.A., Essex C.C. This paper, highly technical in nature, dealt with the increasing use of bulk flowmeters in the sale of fluids and the tests to be applied to same.

During the Conference an exhibition held in the Large Hall was well attended. The exhibits included inspectors' appliances, flowmeters, pressure testing apparatus, trade appliances and office recording systems. This was undoubtedly the finest exhibition so far held both in quantity and quality of exhibits.

REVIEWS

Simon's Income Tax, Second Edition, Vol. V. London : Butterworth & Co. (Publishers) Ltd. Price 3 gns. (15 gns. the set).

This volume completes the substantive portion of this new edition of *Simon's Income Tax*, by which we mean the work itself as distinguished from the Service, which will be maintained at an annual charge of £2 12*s.* 6*d.* The volume contains the consolidated Tables of Statutes and Cases for the whole work, and the consolidated Index. These tables and the index will be kept up to date by the publication of supplementary tables and an index with each issue of the "Service," and by the annual re-issue of the whole of the tables and index in consolidated form. The Table of Statutes includes not only references to the points in the narrative text (Vols. 1–3) where the various Acts and sections are treated, but also to the pages of Vol. 4 where all the current Acts immediately concerned with income tax have already been printed ; for the text of statutes other than those immediately concerned with income tax there is due reference (throughout *Simon*) to *Halsbury's Statutes*. In the table of cases in the present volume defendants as well as plaintiffs, and respondents as well as appellants, are noted, a method likely to be especially helpful in this subject, because so many tax cases have begun in the name of an inspector of taxes, a name often less likely to be retained in the memory than that of a taxpayer who may be a well-known personality or much advertised company. There is also the perennial difficulty in our English system of citation, that when an appeal goes to the House of Lords the parties may change places in the title of the case.

This volume, as mentioned above, will be re-issued periodically ; the introduction invites those who use it to submit suggestions for its improvement, particularly in regard to index entries, about which there is room for difference of opinion. Meanwhile, those who have prepared the index have based themselves upon that in the first edition whilst adding a number of fresh entries.

We have said that Vol. IV contains the current Acts immediately concerned with income tax. The table of statutes in the present volume covers, of course, many other Acts—reinstatement in civil employment, distribution of industry, and restriction of ribbon-development, for example. In fact, the table of statutes runs out to seventy-six pages, including some Commonwealth statutes, which is one measure of the extent to which income tax impinges upon every aspect of ordinary life. The table of cases occupies nearly 140 pages. It is saddening to reflect upon the time and money expended in these efforts to elucidate the law, but so it is, and the serious practitioner must be prepared to track the law through this labyrinth—a task not to be performed without skilled guidance.

There is one other point to be specially mentioned in regard to the table of statutes and index in this volume, namely, that references to the three bound volumes of the work (those numbered one to three) are to articles separately numbered, not to pages, and that the article where an Act or section is principally dealt with is distinguished in the table of statutes by black type.

Using *Simon* regularly, we found the index to the first edition a particularly good example of how indexing should be done, when a major work covering several volumes is being dealt with ; we have no doubt that the index now under review will prove still better, as the result of accumulated experience.

Governmental Liability. By H. Street. London : Cambridge University Press. 1953. Price 25s. net.

This work forms part of a series of Cambridge studies in international and comparative law and is directed primarily, according to the publishers, to the right of the individual to sue the State. Mr. Street is a solicitor and professor of law in the University of Nottingham, and his approach to governmental liability is essentially that of a lawyer, who regards the right of bringing an action as the foundation of liberty, and the central feature of law and politics. It is true enough that the English rule of Crown immunity, which has been carried overseas and adopted (divorced from its original theoretical justification) in the United States, had a feudal origin and has never been thought out in its practical application to a modern society. It is, however, equally true that empirical attempts have been made, and are made every day, to adjust the old conceptions to modern needs and preserve a balance between public requirements on the one hand and private claims upon the other. Professor Street's approach has at the present day rather an old-fashioned air, and he seems out of touch with modern trends of thought which would say that the community as a whole (represented by its government) has duties to the general body of its members which, on occasion, may override the supposed rights of individuals. So far as we can find, the learned author does not at all mention the extensive rights to compensation, recoverable otherwise than by action, which exist in modern legislation, or the rights to compensation on loss of office, which nowadays are almost universally given and have a great bearing upon the statement at p. 117, that an employee is often prejudiced by a statute abolishing his office.

On the other hand Professor Street does emphasize the point we have so often made, that, as between an individual who suffers and some more powerful litigant who has caused his suffering, the real test is not default upon the latter's part but the fact that the injury has occurred. As we have seen the working of the law, it is particularly in regard to the relation between local authorities and private persons that this principle needs to be emphasized, but it applies equally where public corporations are concerned, and should apply as between the subject and a government department. The book is a mine of information, much of it gained by personal investigation in the United States and on the European continent.

There is a table of statutes covering Great Britain and some of the self governing Dominions, though not it seems the United States, and a table of cases covering many countries, including many from the U.S.A. and France, and some from other countries. The index is, however, too brief to be of much service. Our general impression is that Professor Street's mind is moving in a framework set for him by Lord Hewart and Sir Carleton Allen, and that the approach is too one-sided. But the work can be recommended for the great amount of information it contains, so long as the reader is alive to its limitations.

Paley on Summary Convictions. Tenth Edition by Edward Hughes and A. C. L. Morrison, C.B.E. London : Sweet & Maxwell, Ltd. Price £3 15s. net.

For 140 years *Paley* has been a leading text-book on summary jurisdiction and no book can hold that position for that length of time that does not conform to the highest standards in legal literature. This new edition, the joint work of two authorities on summary jurisdiction, maintains the high standard of previous editions.

It is a forbidding task to set about revising so voluminous a work as *Paley*, but the editors have done it ruthlessly and successfully. So far as can be judged the anachronisms that mar so many modern editions of old books have been avoided. Indeed, Messrs. Hughes and Morrison should strictly be called the authors, not the editors, of this edition, as it contains so much new material. They suggest that owners of the previous edition of *Paley* (1926) might retain their copy for the sake of some of the ancient learning it contains, and that recommendation should be followed.

As might be expected, three-quarters of the new edition is devoted to the Magistrates Courts Act, 1952, and the Magistrates Courts Rules, 1952, and these are annotated, with reference to the legislation they supplant. Features of this part of the book are the very full treatment accorded to certain subjects, *e.g.*, summonses and warrants ; search warrants ; time limits, and form of conviction or order. References have been brought up to date and the whole lay-out makes the book just what a justices' clerk or practitioner requires for quick and accurate reference.

The remainder of the book has useful chapters on justices of the peace, methods of questioning justices' decisions, and protection of justices and constables. There are seven appendices reproducing statutory instruments and Home Office Circulars dealing with Juvenile Courts, Probation, Poor Prisoners, Witnesses Allowances, Accounts, etc., which make the book the perfect reference book for a justices' clerk.

Generally no adverse criticism can be made, but we may be allowed to comment on an occasional omission, rather than any mis-statement. For example at p. 87 it is stated that no authority has been found regarding the procedure to be followed where the jurisdiction of the justices is ousted. Actually in *R.* v. *Holsworthy Justices, Ex parte Edwards* (1952) 1 All E.R. 411, the Lord Chief Justice stated what the procedure should be (in fact, it coincides with the opinion expressed by the authors). Again, the paragraph on the competence of a spouse, at p. 154, would have been strengthened by a reference to *R.* v. *Lapworth* (1931) 1 K.B. 117. We would also venture to demur at the too frequent use of the ugly expression "As to." Three consecutive sentences on p. 1 commence with these words.

These are, however, but trivial blemishes of what otherwise is a first class job of work, admirably executed and handsomely produced on high quality paper.

Introduction to French Local Government. By Brian Chapman. London : George Allen & Unwin Ltd. Price 18s. net.

This work was, we understand, sponsored by the Institute of Public Administration, and help was given from the research funds of the National Association of Local Government Officers. It was recognized, in our opinion very properly, that those who are concerned with local government in England have much to gain from learning how similar functions are carried out across the Channel. To a great

extent the needs of both countries are the same: schools, housing, highways, water supplies, and so forth, and yet different political institutions, and in many ways a different mental outlook, have produced quite different ways of doing things. The work is divided so as to show first how the elected councils work, and secondly howthe official administration works. There is, in many ways, a clearer distinction between the legislative and executive functions in local affairs than exists with us. The heading "Tutelage and Local Authorities" relates to what we should call (broadly speaking) the association of locally elected bodies with officials of the central government, and here there is much greater clarity of thought in France than there is in England—although obviously, in working and developing institutions, there is empiricism as well. At p. 166 (marred by an unfortunate error of proof reading) in the reference to Lord Justice Denning, there is an excellent summary of what has been achieved by the administrative courts, headed by the Conseil d'Etat, in relation to local government. We have, however, looked in vain for mention of a most instructive case from Briançon, about the power of the *maire* to interfere with sanatoria, which was reported in English newspapers last year. Later in the book there is detailed treatment of local government finance. The old system of "additional centimes" (which has been suggested for adoption here) is still in force, but in France as in England it has been necessary to resort to equalization funds and various resources for finding new revenue. The matter is complicated, but is set out by Mr. Chapman as clearly as its nature admits.

We gather that a great deal of what is to be found in the book is the result of investigation carried on in France, and, although in certain matters it has not been possible to give more than illustrations from different towns, these have been fairly selected, so as to show both large and small communities in action. The book is not devoid of humour; it is packed with information, and can be called an unusually good eighteen shillings' worth.

The Changing Law. By Sir Alfred Denning. London: Stevens and Sons, Ltd. Price 10s. net.

This is a collection of addresses delivered by Lord Justice Denning at several universities, in accordance with the admirable purposes of the Hamlyn lectures. It is not intended to be an exposition of legal propositions, but to make plain how the law is developed by the judges. The lay press has fastened on the statement in the preface that, because no one knows what the law is until the judge expounds it, the judge does in fact make law. This statement needs to be considered in its context, and primarily the learned author's object has been to show how the law must develop (and in fact does develop) for meeting new conditions. He believes that there is an instinct for justice which is the true basis of society, but on the other hand that this instinct can only work itself out under the influence of Christianity. This seems odd. Has not his lordship read the first book of *The Republic*? Again, the follower of Confucius might agree with the authors of the Education Act, 1944, who followed Lord Chesterfield in holding that religion must be allowed to be a collateral security to virtue, but would find it queer to be told by a lord justice (of all people) that without religion there can be no morality—as indeed would be a good many western thinkers, who have gone deeper than (say) the sermon read by Corporal Trim. Lord Justice Denning properly invokes Aquinas, and the lawyer even in this mid-twentieth century cannot, any more than the philosopher, escape the shadow cast by that gigantic figure. But neither Aquinas nor his forerunner Augustine was the originator of European ethics. The instinct for liberty comes next, which naturally enough means for Lord Justice Denning the independence of the judges, which he links to their freedom from removal by the government. It is a coincidence that, about the time when we received his lectures for review, the High Court should have been obliged to point out that even a judge's statutory freedom from removal is exceptional, and is enjoyed only by a minute fraction of the judiciary. So again, it is easy to speak, as does Lord Justice Denning, of freedom of discussion as being the keystone of political liberty, but those who so speak constantly forget that effective discussion is conditioned, in a modern industrial society, by a control of money. The lay press has fastened upon statements in the present work under the heading of "the rule of law in the welfare state," a heading which has provided many good things for newspapers to collect. Here we cannot think the brief analysis of *Howell* v. *Falmouth Boat Construction Co.* [1951] 2 All E.R. 278, as contrasted with *Jackson, Stansfield & Co.* v. *Butterworth* [1948] 2 All E.R. 558; 112 J.P. 377, is sound. The *Falmouth* decision is not easy to reconcile (at best, and Lord Justice Denning's explanation of it seems positively to conflict) with earlier decisions of the High Court, which form an essential basis for the honest administration of the law. Under the heading "The Rights of Women," Lord Justice Denning sets out the stages by which women have secured emancipation, but omits to notice how the result has been to give the wife a preferential position as against the husband.

Altogether, the lectures are interesting (as they were bound to be, looking to his lordship's well known aptitude for looking at old problems in a new way) but we doubt whether, in discussing the conception of English law in a changing world, he has reached so near the roots as in his earlier *Freedom Under the Law*.

The Cyclist and the Law. By P. F. Carter-Ruck and I. R. Mackrill. London: Herbert Jenkins Ltd. Price 12s. 6d. net.

It is claimed that "this is the book for which thousands of cyclists have long been waiting, an up-to-date work dealing with every branch of the law which touches the cylist in one way or another." In the introduction it is stated that it is not a text book, and must not be looked upon as such.

The book certainly deals clearly with the many legal and other problems with which cyclists may be concerned, and statements as to the law are usefully illustrated by setting out the facts of various cases so that the reader can more readily appreciate the circumstances in which certain decisions of the courts were given. The purchase and hire of cycles, their transport by road, rail and sea, civil and criminal rights and liabilities, the law as to highways (including that relating to animals which may be encountered thereon) are amongst the subjects dealt with.

For a book of this kind, the language used is perhaps at times rather more appropriate to a legal text book than to one meant for all cyclists, including those whose education has not gone beyond the stage it had reached when they left school at the age of fourteen, but we recognize, of course, that it is difficult at times to explain legal matters in terms which avoid entirely the use of some words which may have, in law, a somewhat specialized meaning.

One omission we notice from the text and the table of statutes is the Metropolitan Police Act, 1839. Within the metropolitan police district the Town Police Clauses Act, 1847, does not apply and many cyclists have been, and will continue to be, prosecuted under s. 54 (5) of the Act of 1839. Section 59 of the Act, with its special provisions as to children apparently under the age of twelve is also still in force.

Such an omission is, however, a very minor matter in a book dealing in small compass with so many different problems, and we think that cyclists and others will have reason to be grateful to the authors of this very useful book.

S.I. Effects as at December 31, 1952. London: Her Majesty's Stationery Office. Price 5s. net.

This publication, much smaller in bulk than the *Guide to Government Orders*, is a companion volume. As is mentioned in the preface to the *Guide*, it gives the effect of new statutory instruments upon those previously in force, showing whether they have been revoked or become spent or put out of action in some other way. It is a common experience, when working out a legal problem upon which (in the modern manner) a number of statutory instruments may have a bearing, to discover that these have changed since the textbook one is using was published, or, it may be, even while the particular piece of business was in progress. It will be very handy to possess this table covering 140 pages of "effects," for the purpose of checking quickly whether this or that subordinate enactment has remained in force. The work is intended to be an annual publication.

De Quelques Piliers des Institutions Britanniques. By Jean Duhame and J. Dill Smith. Paris "La Vie Judiciaire." Price 800 francs.

The British Institutions with which the learned authors here set out to deal are, primarily, judicial and related institutions. Maître Duhamel is said to be a member of the French and English bars, and Mr. Dill Smith to have been a member of the English bar and to hold a history degree at Oxford.

Appropriately, the book starts with Montesquieu and the division between executive, legislative and judicial functions, pointing out that complete separation is impossible and that, in different parts of the world, the ideal of separation has been realized in different degrees and by different methods. The empirical organization of the English judiciary, which has grown up through the centuries, is contrasted with the logical and coherent organization of the French judicial system, and the authors go into detail about the functions of judges, registrars, masters and the rest. There is even an account of the local courts at Liverpool, Bristol and elsewhere, and of ecclesiastical courts and courts-martial. The functions of the jury are explained, together with the decline of the jury on the civil side.

There is praise for the system of calling and giving evidence, with its clear distinction between the functions of the prosecution and the magistrate.

The "Petition of Right" and *habeas corpus*, in earlier days and at the present day, are carefully explained and there are chapters on contempt of court and the organization of the police system. The chapter on the organization of the legal profession contains information

which will seem curious to foreign readers, who are not acquainted with our two-branched system. The fact that the book is up to date is evidenced by the inclusion of the Legal Aid and Advice Act, 1949.

We have found a few misprints, but these are not important. The printing and paper are not up to the best English standards (this indeed is usual with French books) and, as is also usual, the book has a paper cover, leaving its purchaser to have it bound more strongly if he wishes. There would presumably be some difficulty about ordering the book in England during the present restrictions upon foreign exchange, but the price of 800 francs is not out of the way by comparison with English books containing a similar amount of information and it would provide interesting reading for anybody concerned with the administration of the English law, if he was able to obtain a copy while travelling abroad.

PERSONALIA

APPOINTMENTS

Mr. James Clarke, deputy clerk and chief financial officer to Hindley district council, has been appointed clerk and financial officer to Upholland district council in succession to Mr. J. W. Dickinson who is to retire.

Mr. C. William Skinner, barrister-at-law, chairman of the Edmonton Petty Sessional Division and of the Westminster, Chelsea and Holborn Rent Tribunal, member of the National Health Service Executive Council (Middlesex), and a former mayor of Southgate and member of the Middlesex County Council, has been appointed a deputy-lieutenant of Middlesex.

Mr. Edward Jones, chief accountant to the borough treasurer of Tunbridge Wells, has been appointed borough treasurer of Oswestry. He succeeds Mr. A. Garner Pugh who is retiring after being the borough's chief financial officer for over forty years.

Dr. E. H. B. Hopkins has been appointed medical officer of health for Llanelly corporation and divisional medical officer to Carmarthenshire county council.

Dr. John Sleigh, medical officer of health for Andover municipal borough and rural district council, and for Kingsclere and Whitchurch rural district, has been appointed divisional medical health officer, Nova Scotia Provincial Government.

RETIREMENT

His Honour Judge G. C. Allsebrook, chairman of the Cumberland Quarter Sessions since 1945, has retired under the age limit.

Dr. John Burman Lowe, county medical officer of health for Wiltshire, is to retire in September after nearly thirty years' service with the county. He was formerly medical officer of health for Chippenham borough and rural district, and assistant school medical officer for Birmingham.

OBITUARY

Mr. Francis William Soal, retired Carlisle solicitor, died recently at the age of seventy-four. Mr. Soal began his career in the office of Messrs. Halton and Hodgson, Carlisle, and later went into partnership with the principal, Col. F. W. Halton, coroner for East Cumberland. For many years Mr. Soal was clerk to the old Eden Fishery Board, now taken over by the River Board, and he was deputy coroner for East Cumberland until his retirement some three years ago.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, July 7

ROAD TRANSPORT LIGHTING (AMENDMENT) BILL, read 3a.

Wednesday, July 8

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) BILL, read 3a.
SLAUGHTER OF ANIMALS (PIGS) BILL, read 3a.

Thursday, July 9

DOGS (PROTECTION OF LIVESTOCK) BILL, read 3a.
NATIONAL INSURANCE BILL, read 3a.
SCHOOL CROSSING PATROLS BILL, read 3a.

HOUSE OF COMMONS

Thursday, July 9

VALUATION FOR RATING BILL, read 3a.
NEW TOWNS BILL, read 3a.

Friday, July 10

THERAPEUTIC SUBSTANCES (PREVENTION OF MISUSE) BILL (LORDS), read 3a.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

With reference to P.P. 17 at p. 388 of June 13, I agree with your answer that, at least from January 1, offences against Customs and Excise Acts are punishable on summary conviction.

It may be unfortunate, however, that the attention of the Divisional Court in *Brown* v. *Allweather Mechanical Grouting Co. Ltd.*, was not drawn to *R.* v. *London Justices and Another ; Ex parte Hoey*, 110 J.P. 82, in which, what would appear to be the same principle of law, was decided by the Court of Appeal.

In that case, which was an appeal from the Divisional Court on what purported to be a civil matter, the offence was selling liquor without having an excise licence, contrary to s. 50 (3) of the Finance (1909-10) Act, 1910. Under that section, as in s. 13 (2) of the Vehicles (Excise) Act, 1949, a person becomes liable to an excise penalty. The decision of the Court of Appeal was that the order of the Divisional Court was made in a " criminal cause or matter," and that no appeal lay from the order of the Divisional Court.

Clause 31 of the Finance Bill, 1953, proposes to clarify the position by providing that all offences against Customs and Excise Acts shall be of a criminal nature.

Yours faithfully,
F. MORTON SMITH.

Justices' Clerk's Office,
Magistrates' Courts,
Market Street,
Newcastle-upon-Tyne, 1.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

In your issue of the 27th instant at p. 415 there is a report of a defendant being fined by my Justices £5 and ordered to pay 15*s.* costs for selling milk to which water had been added.

In the interests of accuracy, I beg to observe that the amount of costs ordered to be paid was £15 15*s.*, which was announced in court as " fifteen guineas." Possibly the reporter from whom your note is derived mis-heard the Chairman.

Yours faithfully,
JOHN F. HEDGES,
Clerk to the Justices.

Magistrates' Clerks' Office,
Wallingford,
Berks.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

MORE POLITICAL NOTES

The incursion of Signor Gigli into the political arena prompts a reflection upon a distinguished predecessor not mentioned in the article in your issue of June 20.

It was in 1839 that a young man stood in the wings of La Scala, Milan, and heard his second opera jeered out of existence. The audience did not know—or did not care—that it had been written by a man stricken by the death of his wife and children ; the composer never forgot or forgave and his immediate reaction was to vow never to write another note. Two years later, however, he was asked to look over a libretto rejected by Nicolai (the composer of " The Merry Wives of Windsor "). The libretto told of the Jewish exile in Babylon and, as he threw it down on the table in his lodgings, it fell open at the point where the exiles sang of their homeland—the great chorus '*Va pensiero sull 'ali dorati* ! The words appealed to the patriot ; the vow was forgotten in the urge to find music which should match them. The young man was to light the torch of revolt with this chorus—his name was Guiseppi Verdi.

Italy in those days was no nation but a collection of petty states, maintained in an uneasy equilibrium by the great powers, in particular Austria. But behind the façade of the little courts and the puppet rulers the nationalist movement was at work. As yet the underground movement had no voice—but on that night when " Nabucco " was produced at La Scala it was to find its anthem. That night *Va pensiero* became the battle hymn of the Risorgimento ; students sang it ; Austrian troops strolling homeward through the darkened streets of garrison towns quickened their pace as they heard the strains of the chorus behind them.

As the movement grew, it seemed that Verdi's music matched it. Each successive opera was the scene of a bitter struggle with the censor; almost all provided material to fan the flame of nationalism; at least one—"Macbeth"—was given with police lining the Opera House, ready to deal with any demonstration. Finally with "A Masked Ball," the movement gained a new slogan.

"A Masked Ball" appeared at an unpropitious moment. It followed an attempt to assassinate Napoleon III of France in Paris which sent an uneasy flutter through the throne-rooms of Europe. As the plot dealt with the assassination of a monarch it was not surprising that it was suppressed—but the populace took up the struggle. The slogan "*Viva* Verdi" began to appear; then it was discovered that the letters had a double significance. Victor Emanuel, king of Piedmont, was the popular candidate for the throne of a united Italy, and the slogan could mean Victor Emanuel Re D'Italia. "*Viva* Verdi" became the rallying call of United Italy.

In Piedmont, Cavour the Premier, had worked quietly for the cause for a long time: now at last he succeeded in breaking the alliance of the great powers by provoking Austria to attack. On the day when Austria invaded, a vast crowd gathered in the square awaiting the signal to take up arms in defence of their country. When Cavour appeared on the balcony, the sight of the silent, questioning ranks left him at a loss for words to match the occasion; then he began to sing the great tenor aria from "Il Trovatore"—*Di Quella Pira*. So it was that Verdi's music, which had inspired the patriots for nearly twenty years was the signal for the last struggle to begin.

It was not surprising, then, that Verdi should be asked to accept office in the first Italian Parliament. History does not record that he achieved distinction in his short term as a legislator—although he is alleged to have set a debate to music, and possibly the great Council chamber scene in the revised version of "Simone Boccanegra" was suggested by his experience as a senator.

Verdi as a legislator is certainly an unusual figure; it may be, however, that in remembering him only as a composer we do less than justice to the "Maestro of the Revolution" and perhaps it is not so surprising that one who has been for so long associated with his music should seek to follow him into Parliament.

Yours faithfully,
J. W. COOK.

157 Park Road,
Crouch End, N.8.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MOTORING OFFENCES

Mr. W. S. Shepherd (Cheadle) asked the Secretary of State for the Home Department in the Commons to what extent young constables were sent out with instructions to bring in trivial motoring offenders for the purpose of gaining experience in police courts; and whether that practice had the approval of his Department and the Inspectorate of Constabulary.

The Joint Under-Secretary of State for the Home Department, Sir Hugh Lucas-Tooth, replied that no such instructions were in force in the Metropolitan Police, and so far as the Secretary of State was aware no such practice existed in any of the county and borough police forces of England and Wales.

GAMING PROSECUTIONS

Mr. Norman Smith (Nottingham S) asked the Secretary of State for the Home Department whether, pending an amendment of the Gaming Houses Act, 1854, he would advise chief constables not to proceed against workmen's clubs in which a stipulated proportion of the proceeds of the game of house was applied to charitable objects.

ACTIONS AGAINST THE CROWN

The Attorney-General told Dr. H. M. King (Test) that approximately 520 actions were commenced against the Crown in the High Court and county court during the twelve months ending on May 31, 1953.

HEIGHTS BY GREAT MEN REACHED

The ascent of Mount Everest has inspired adventurous spirits throughout the British Commonwealth. Over and over again the heroes of the hour have been asked " What does it feel like to climb higher than any human being has ever climbed before ? " and their replies have been modest, matter-of-fact and non-committal. Deprecating fussy publicity, and avoiding high-falutin' phrases, they have sensibly limited their replies to such practical matters as feeding, breathing, keeping warm and preserving sufficient energy for their descent ; technical information rather than philosophical reflection has been the content of their written and oral pronouncements.

For us ordinary mortals, who can never hope to aspire to such heights of endeavour, this attitude must seem something of an anti-climax. The realization that one is literally " on top of the world " must bring with it a spiritual as well as a physical exhilaration ; the instinct to dominate, to rise above the rest of mankind, must surely find its most abundant satisfaction when one is standing on the summit of a mountain five miles high and more. There, if anywhere, the proud words of the Roman Lucretius, from his poem on *Nature*, must seem to have found their fulfilment :

> " But sweeter far, to stand upon the height
> Well-fortified in wisdom, where the bright
> Temple of Knowledge rises, calm, serene,
> And look down thence upon that other scene—
> Those others, wand'ring in the vale below,
> Hither and thither straying, to and fro,
> Seeking their way through life, and groping as they go."

Such may well have been the sensations of these intrepid explorers ; but a recent case in the Courts shows that a wise restraint does not invariably accompany pre-eminence in the perpendicular plane. In the City of Birmingham—a locality which has never been intimately associated in our mind with mountaineering activities—emulation of the Everest exploit has brought to one venturesome person the indignity, before the Stipendiary Magistrate, of a conviction and fine. His method of celebrating the contemporaneous events of the Coronation and the conquest of the world's highest mountain took the form of climbing, on June 2, to the roof of the local police-station, and thereon affixing an umbrella designed in a patriotic combination of red, white and blue. Pleading guilty to being a " blemisher of the peace " and to " committing a disorderly act," he was fined £2 and was bound over in the sum of £20 for twelve months.

We have been hard put to it to deduce, from the short press-report, the reasons for so strangely designating the offence, if offence it were, that has earned so severe a penalty. Had the contumacious act taken place on the roof of the Municipal Art Gallery, or (worse still) of the Barber Institute, one might have suspected that aesthetic considerations had influenced the decision. " Red and Yellow ! " says Lady Jane, in *Patience*, gaping with horror at the resplendent uniforms of the 35th Dragoon Guards ; " Red and Yellow ! Primary colours ! O, South Kensington ! " Red, white and blue, in persons of extreme aesthetic sensibilities, might very well produce equally strong reactions, and perhaps even lead to a breach of the peace, if too conspicuously exhibited in notoriously artistic surroundings. But no such suggestion has been made, and it is hard to understand why the police, who are ingrained to worse things, regarded the matter so seriously.

There is, of course, the possibility that, while no exception might have been taken to a red, white and blue flag or streamer, it was the umbrella that outraged civic dignity and order. Had the offence been committed in Manchester the innuendo would have been obvious, and the slight put, by implication, on the delightful climate of that lovely City would have been justly resented by every loyal Mancunian. But why, in Birmingham, make all that fuss over an umbrella, gaily-coloured though it was in celebration of two great occasions ?

It is not the first time this bold pioneer has risen, literally as well as metaphorically, to what Milton has called " the highth of this great argument." In the year 1949, the Court was told, he placed an effigy (of whom, is not revealed) upon the top of the Birmingham Children's Hospital. Five months ago he set a brush on the summit of the Church of the Messiah in the same city. In September, 1951, he left a bucket, a broom and an umbrella (a sober and decent black specimen on that occasion) on the spire of St. Michael's Church. The connexion, if any, between these domestic utensils and the venerable edifices they were left to surmount is by no means clear to us ; with Admiral Van Tromp in mind we may dimly surmise that he wanted to make a clean sweep of something or other, but the recurrence of the umbrella-*motif* has doubtless some hidden Freudian significance.

Umbrella or no umbrella, this enthusiasm for scaling high places at moments of great national rejoicing has something more to it than mere exhibitionism. In Ancient Rome, if Shakespeare is to be believed, a similar custom prevailed ; in the First Scene of *Julius Caesar* we find Flavius and Marullus (two of the Tribunes, who exercised magisterial functions at the time) reproving certain rowdy citizens for similarly extravagant behaviour—and reproving them in very forthright terms :

> " You blocks, you stones, you worse than senseless things !
> O you hard hearts ! You cruel men of Rome !
> Know you not Pompey ? Many a time and oft
> Have you climb'd up to walls and battlements,
> To towers and windows—yea, to chimney-tops,
> Your infants in your arms, and there have sat
> The livelong day, with patient expectation,
> To see great Pompey pass the streets of Rome."

These Romans, at least, had this rational excuse for climbing, that they wanted to get a good view of the procession ; there is no record of their decorating the Capitol with buckets and brooms, or attempting to propitiate Jupiter—not even Jupiter Pluvius—by suspending umbrellas from the columns of his temple. No evidence having been produced in support of the theory that the Birmingham mountaineer had some practical object in view, his exploit must be put down to a manifestation of noble and disinterested eccentricity, brought about by sheer exuberance of spirits at the concurrence of two great historic events. Confronted with the umbrella, the *corpus delicti*, he did not quail or flinch ; regarding it, as it fluttered its proud tricolour in the breeze, with pardonable pride, he told the police—" This was my Big Moment ! " And, in that simple phrase, something of the sense of achievement, one shining ray of the glory of his fellow Commonwealth-citizens, reflected from that majestic Peak in far-off Nepal, falls athwart his native Birmingham and adds a brighter lustre to its fame.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption—*Change of surname of infant, whether obligatory.*

Mr. and Mrs. X are proposing to apply to my justices for an order to adopt a child (who is illegitimate) named, let us say, John Smith. They do not, however, want to have the boy's name changed, that is to say, assuming the adoption goes through he will not be known as John X but as John Smith, as before. I had assumed hitherto that the change of surname automatically followed an adoption, but Mr. and Mrs. X tell me that they are advised that this is not so. Can this adoption be made in their favour and the boy still be registered as Smith? SEV.

Answer.

The child need not change his surname. If he is to continue to be known as John Smith that will be the name entered in the second column of the schedule to form 4 (Adoption Order) and that will appear in the adopted children Register. If the infant uses an extract from the adopted children Register in lieu of his birth certificate, that will show him as John Smith who has been adopted by persons with a different surname. If, however, he chooses to use his original birth certificate in the shortened form, that will not disclose either illegitimacy or adoption.

2.—Children and Young Persons—*Aproved school order—Appeal by local authority named.*

With reference to your "Notes of the Week" in the issue of February 28, was it really necessary for these two authorities to go to court? Could they not have applied to the Home Secretary under the Children Act, 1948, s. 1 (4)?

A year or so ago a boy was committed to an approved school by a court in the county and D county borough was named as the authority in which the boy resided. D county borough commenced to pay costs of maintenance. It was later found that the boy's place of residence was X county borough and therefore the court order was not in order. The case was put to X children's officer and liability was accepted by that authority, without any attempt to avoid on legal grounds, and the payments already made by D county borough were refunded.

The court order has not been varied. SONE.

Answer.

While we agree that the procedure under s. 1 (4), *supra*, is applicable, and convenient, in the case of a child received into care under s. 1, we cannot agree that this procedure applies in the case of an approved school order. Where such an order is made s. 70 (2) and s. 90 of the Children and Young Persons Act, 1933, govern the matter.

3.—Criminal Law—*Borstal—Committal for sentence—Discharge on ground of absence of requisite reports—Re-committal.*

On July 26, 1952, X was committed by a magistrates' court to the appeal committee of quarter sessions under s. 20 (3) of the Criminal Justice Act, 1948, with a view to his being awarded a sentence of borstal training. Before the case was opened at the appeal committee (on August 1, 1952) X's solicitor submitted that the appeal committee had no jurisdiction to deal with the case on the ground that the magistrates' court, before committing X for sentence, had not had before them any report or representations made by or on behalf of the Prison Commissioners on the prisoner's physical and mental condition and his suitability for Borstal sentence and that, therefore, the committal was bad. The appeal committee upheld this submission. X's solicitor then applied for X's release from custody, submitting that such a course would be in accordance with that adopted by the recorder of Grimsby in a case which subsequently became the subject of an appeal (but on grounds other than the fact of the release from custody) to be known as *R.* v. *Recorder of Grimsby, Ex parte Purser* [1951] 2 All E.R. 889. The appeal committee decided to accede to the application and ordered X's release from custody, but the chairman announced that such decision was not to prejudice any subsequent proceedings which could legally be taken against X in respect of the offence in question.

Following his release by the appeal committee X was again brought before the magistrates' court on August 11, last, and the hearing was adjourned from time to time in order that certain information might be obtained concerning him and ultimately, on November 1, last, he was remanded in custody under the provisions of s. 20 (7) of the Criminal Justice Act, 1948, in order that the necessary report by the Prison Commissioners might be obtained. On November 22, after considering the Prison Commissioners' report, the magistrates' court again committed X to the appeal committee for sentence in accordance with the provisions of s. 20 (3) of the said Act.

(1) Will you please advise whether it will be in order for the appeal committee which meets at the end of this month to take the matter into consideration and to pass sentence in accordance with s. 20 (5) of the Act?

(2) On November 1, 1952, X (the same accused as in (1) above) appeared before the same magistrates' court on a charge of store-breaking and larceny contrary to s. 26 of the Larceny Act, 1916, and was committed for trial to the next court of quarter sessions.

In the event of the appeal committee having jurisdiction to deal with X as set out in (1) above, your opinion is sought on the question whether the appeal committee should deal with the question of committal for borstal training before or after the trial of X by quarter sessions. SLAB.

Answer.

(1) In view of the decision in *R.* v. *Recorder of Grimsby, supra*, it would appear that the committal for sentence should not have been treated as invalid, and that quarter sessions could have dealt with the matter if they obtained the necessary report from the Prison Commission. However, as they took no action by way of proceeding to sentence, we are of opinion that the conviction stands and, the defendant being again before the appeal committee, the committee can proceed to pass sentence, not having exhausted its jurisdiction by merely releasing the defendant without proceeding to judgment.

(2) We do not think this matters very much, but it may be more convenient to deal with the committal for sentence first.

4.—Elections—*Local government franchise—Non-residential qualification.*

Section 5 of the Representation of the People Act, 1949, provides that a person who is not resident in the local government area, but is the occupier as owner or tenant of any rateable land or premises therein of the yearly value of not less than £10, is deemed to have a non-residential qualification as a local government voter.

1. Does "occupying" mean physical occupation so that the owner of a private dwelling-house, which he does not occupy in that sense, or only occupies in that sense for a short period (*e.g.*, summer holidays) does not have a non-residential qualification?

2. If the premises are occupied by a limited company, or by a partnership, who, if anyone, is entitled to a non-resident qualification? D. ELECT.

Answer.

1. The claimant need not be present in the flesh throughout the period, but must not, subject to the exception provided in subs. (2), have let anybody else in to occupation so as to exclude himself.

2. Subsection (4) seems to us to meet the case of partners, but a limited company is not a person within the meaning of the section: *Wills* v. *Tozer* (1904) 53 W.R. 74.

5.—Husband and wife—*Aggravated assault—Separation order—Summary conviction of assault causing bodily harm.*

On December 4, 1952, H was summarily convicted and fined £2 for assaulting his wife W thereby occasioning actual bodily harm, contrary to s. 47 of the Offences Against the Person Act, 1861. The circumstances of the case were that W was found moaning and unconscious in a back arch adjoining her home. H was seen walking away from the scene but the wife did not remember what happened after meeting H in the arch. She was taken to hospital where four stitches were inserted in her head and she also sustained severe bruising to her face. She returned home the same evening after three hours in hospital because she was anxious about her children, although the doctor advised her not to.

A few days prior to the hearing W's solicitor served notice on H that it was intended to apply, if he was convicted, for an order under the Summary Jurisdiction (Separation and Maintenance) Acts that the wife be no longer bound to cohabit with her husband and for maintenance and custody of the children. The notice did not specifically mention the grounds of the application but it did recite the police charge against H of assault occasioning bodily harm.

Immediately after H was sentenced, W's solicitor, no doubt having in mind s. 8 of the Summary Jurisdiction (Separation and Maintenance) Act, 1895, applied for a summons returnable immediately on the grounds that H had been convicted summarily of an aggravated assault upon W within the meaning of s. 43 of the Offences Against the Person Act, 1861. He argued that the offence of aggravated assault must include the more serious offence of assault occasioning bodily harm. H's solicitor said that he had only received the notice the day before and had not had time to look into the legal aspects of the application. The justices issued the summons but returnable for fourteen days hence.

There seems to be no reported cases on the matter, the nearest being *R.* v. *Knowles* (1900) 65 J.P. 27 where it was held that a conviction for throwing vitriol at a wife was a " conviction upon indictment of an assault upon her." Also it would appear from *In re Palmer* (1878) 45 J.P.N. 84 and other cases that the fact that H was fined only £2 would not in itself be a bar to making an order on the grounds of aggravated assault.

I would be grateful for your opinion as to whether the justices are entitled to find that a conviction under s. 47 is a conviction of " an aggravated assault within the meaning of s. 43 of the Offences Against the Person Act, 1861." SIDE.

Answer.

The justices did not purport to act under s. 43 of the Offences Against the Persons Act, 1861, and did not formally convict of aggravated assault. That section refers back to earlier provisions of the Act relating to common assaults, and therefore does not specifically bring in s. 47, which deals with the offence of which H was convicted. In the absence of a High Court decision we do not think justices would be justified in holding that a summary conviction of an indictable offence of assault is to be considered to be a conviction of aggravated assault.

It might be argued, though this is a debatable point, that since s. 27 (3) of the Summary Jurisdiction Act, 1879, provides that a summary conviction for an indictable offence is to have the same effect as a conviction on indictment, a summary conviction under s. 47 could be treated for the purpose of s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, as if H had been convicted on indictment of an assault upon W. In the present case this would not avail since H was fined only £2.

We therefore come to the conclusion that in the present case, by reason of the nature of the charge and conviction the justices ought not to assume jurisdiction to make an order.

[We print the answer as it was given to our correspondent by post, before the Magistrates' Court Act, 1952, came into force. *Ed., J.P. and L.G.R.*]

6.—Landlord and Tenant—*Furniture of evicted tenants removed irregularly by landlord—Sale.*

Proceedings for possession have recently been taken against the tenants of two council houses. One tenant was ultimately evicted and the other left of his own accord and in both cases certain articles of furniture and other belongings were left on the premises. Neither tenant has made any attempt to remove these, and they have been temporarily stored in the council's highways depot. May I have your advice as to how the council should proceed to dispose of these goods? Both the owners have been told where their goods are and asked to make arrangements for their removal, but both have failed to do so. Both owe a large amount of rent, and proceedings for this are pending. D.R.E.H.

Answer.

The terms of the query suggest that the removal of the goods to the depot was not expressed to be an impounding by way of distress. Seeing that at common law a distress for rent must be upon the demised premises (with exceptions not here relevant) it seems unfortunate that the council did not distrain in the proper way, instead of removing the goods, and assuming irregular custody of them. But since they have so removed the goods, we see no practical objection to their selling them, and abating their claims to arrears by the proceeds of sale. They will presumably have to indemnify the auctioneer, since the goods are not in their custody as a result of legal process, and they would be wise to inform the ex-tenants of their intention.

7.—Licensing—*Change of name of licensed premises.*

The owner of a certain public house in this division wishes to change the name of her licensed premises. I can find no authority as to what is the procedure of saying whether or not the justices can approve or object to a change of name, though it certainly would seem desirable that they should have some control as a licensee might adopt an offensive name.

In the circumstances I am saying the licensee should apply to the justices at the next transfer sessions for their consent because they must be informed of any change of name as it should be recorded in the register; I should like to know in the meantime whether this suggestion could be ignored by the licensee.

Your views on the matter will be most appreciated. NOR.

Answer.

Licensing law does not restrict the right of a licence-holder to describe his licensed premises by whatever sign name he pleases and it places no impediment in the way of his desire to change from one name to another. A convenient time to make the change is when the licence comes up for renewal at the general annual licensing meeting, when the licensing justices may be asked to renew the licence for the same premises as newly described.

See answers to Practical Points at 98 J.P.N. 246 and 113 J.P.N. 196.

We think it unlikely that the licence-holder's assessment of local public opinion will lead him to adopt an offensive name; but there is always, of course, the possibility that an eccentric licence-holder will choose a name that is scandalous, profane or otherwise altogether outrageous, in which event we think that licensing justices would be justified in refusing to renew the licence. But this is an academic point unlikely to arise in practice.

8.—Licensing—*Licensed premises with inadequate sanitary accommodation.*

With reference to P.P. 4, at p. 77, *ante*, in which you state that lavatory accommodation (among other matters) is not within the purview of licensing justices under s. 72 of the Licensing Act, 1910, though " it could well be the subject of complaint by the licensing justices to the local authority."

I will give you two instances of how this " subject of complaint " has worked in my division.

1. Road house on trunk road. Sanitary accommodation two outside earth-closets up an unlit back garden, but an attraction for long distance motor coaches, who have made the house a place of call often purely for the sake of this " accommodation." The local authority could not move because for some time they could not give a water supply to the house. Whether or not it was a nuisance for about forty people to queue in the dark for this " accommodation " or to resort to the fields is a question of opinion. This situation is now ended partly, I think, through the strong representations made by my bench to the owners. From what you say, however, as far as the bench was concerned it would have to have been allowed to continue indefinitely.

2. Village inn with two outside and primitive closets. Thirty or forty people resort to the inn periodically in the winter for darts matches. The owner repeats his assurance he is utterly unable to afford any outlay on the house whatever. The local authority go into the question and decide that from their point of view there is not a " nuisance " so they cannot interfere. They agree the " accommodation " is obsolete and inadequate and hope the bench will " take the matter up." What remedy have the bench? Are they obliged to renew the licence year after year with such an unsatisfactory state of things for which improvement there is no hope?

I shall be most obliged for your observation on these cases and in particular if you think the bench are obliged to renew licences of houses which may not be " nuisances" but which are totally inadequate under present conditions. NON.

Answer.

Our correspondent calls attention to the failure of licensing law to keep abreast with changing conditions.

We adhere to our opinion expressed in the answer which appeared on p. 77, *ante*, although we agree, of course, that in practice much improvement in the structure of licensed premises is often achieved by co-operation between the owners of those premises and the licensing justices. The question which we answered on p. 77, *ante*, had reference only to s. 89 of the Public Health Act, 1936, and s. 72 of the Licensing (Consolidation) Act, 1910, and did not deal with the licensing justices' powers to exert pressure to secure avoidance of their ultimate sanction to refer the question of renewal to the compensation authority under the provisions of s. 19 of the Act of 1910.

There is little doubt that the licence referred to by our correspondent is an " old " on-licence. The licensing justices have the fullest powers to refer the question of renewal to the compensation authority with a view to the licence being extinguished on the ground that the licensed premises are unsuitable for the character of the business carried on.

9.—Local Government Act, 1933, ss. 76 and 95—*Voting disability—Who may apply for removal.*

I was interested to read the paragraph entitled " Voting Disability of Tenants " at 117 J.P.N. 82. You say " Cases have been reported from time to time, where it was thought by local authorities that there was a disability, and their legal advisers had expressed that view, but members refused to apply to the Minister for its removal. . . ." This statement seems to imply that an application to the Minister under s. 76 (8) can only be made by the member suffering under the disability. In the type of case envisaged by subs. (8) it is surely the local authority as a whole that will suffer if the disability is not removed, and it is felt that the local authority should, without reference to the particular members concerned, by a formal resolution, be able to apply to the Minister for the disability to be removed. The Act itself does not specify the manner in which an application should be made. I shall be glad to know whether in your opinion the local authority may make an application to the Minister under s. 76 (8) of the Act in respect of its members. C. SENEX.

Answer.

Yes ; the most usual course is for the clerk of the council to apply, on instructions from the council. As you say, the Act does not specify how an application shall be made, and indeed the Minister could, on the language of subs. (8), act without receiving an application at all, if he became aware that action was desirable. But we have never known a local authority to apply for removal of disability of a member or group of members who, on principle or for whatever reason, did not wish for action by the Minister, preferring to vote, etc., and throw on their opponents the onus of informing the Director of Public Prosecutions.

10.—Magistrates—*Practice and procedure—Summary Jurisdiction Act, 1879, s. 17—Hearing a case of dangerous driving when accused appears by advocate but is not personally present.*

S is an American citizen from New York (a civilian) and whilst on holiday in this country in August he so drove a motor-car that the police issued a summons against him for dangerous driving under s. 11 of the Road Traffic Act, 1930. Before the summons could be heard S had returned to New York. S is anxious to have this matter cleared up and he has instructed a firm of solicitors in the district to appear on his behalf before the magistrates and plead guilty.

The case was restored for hearing and the prosecution elected to proceed summarily. S's solicitor then argued that the court was in a position to deal with the case in the absence of S under s. 17 of the Summary Jurisdiction Act, 1879. The court, however, referred him to s. 28 of the Criminal Justice Act, 1948, and stated that in the opinion of the justices they could not proceed to hear this case unless the defendant, S, was present in person and the procedure outlined in s. 28 had been followed ; they, therefore, adjourned the hearing.

Ignoring the wisdom of hearing a serious case like this in the absence of the defendant and the enforcement of any penalty, will you say in your opinion whether my justices can hear this case and deal with S in his absence ? JUN.

Answer.

Section 17 of the 1879 Act, as amended by the Criminal Justice Act, 1948, sch. IX, gives the right of election to an accused " if he appears in person to answer the charge." Section 28 (4) of the 1948 Act cannot give any greater right to claim trial by jury than is conferred by s. 17 of the Act of 1879.

Therefore, in the circumstances outlined in the question, the justices had jurisdiction to hear the case on the solicitor's plea, and in S's physical absence.

11.—Road Traffic Acts—*Autrefois convict—Conviction for dangerous driving after plea of guilty to careless driving on the same facts.*

I should be glad if you could let me have your opinion on the following circumstances.

A defendant is charged with offences under ss. 11 and 12 of the Road Traffic Act, 1930. Two summonses are issued and he consents to both cases being dealt with together. On being asked to plead he consents to the charge under s. 11 being dealt with summarily and pleads not guilty. The charge under s. 12 is then put to him and he pleads guilty. Evidence is then called and the case dealt with. The magistrates find him guilty of the charge under s. 11 and dismiss the charge under s. 12.

At the back of my mind I have a recollection of seeing some mention of circumstances such as this in your journal, and although I have made a diligent search I cannot find the reference and I may be mistaken. My recollection is, however, that under these circumstances the defendant having pleaded guilty to the s. 12 charge he is *autrefois convict* on the s. 11 offence and no separate penalty can be imposed on this.

I am probably quite wrong on this point, but I shall be grateful if you will let me have your views. JARA.

Answer.

In our view when the court invites a plea on the s. 12 charge and the defendant pleads guilty, this constitutes a conviction for that offence, which is a bar to a subsequent conviction under s. 11 on the same facts.

We dealt with this matter in P.P.s at 110 J.P.N. 510 and 112 J.P.N. 16, and in an article at 112 J.P.N. 305. In this article we discussed a different point of view put forward in a contributed article at 112 J.P.N. 226.

12.—Road Traffic Acts—*Registration and Licensing Regulations—New owner failing to notify council that he has acquired vehicle—Continuing offence ?*

AB acquires a motor vehicle in June of last year. He fails to notify forthwith the local taxation officer of such acquisition in accordance with reg. 9 (2) of the Vehicles (Registration and Licensing) Regulations, 1951. The offence is not discovered by the police until February, 1953.

Does the six months' limitation of time for proceedings apply so as to prevent a prosecution being launched for the offence, or can it, despite the word " forthwith " be considered as a continuing offence ? It is thought that there has been a case on this particular point, but the writer is not able to trace it. Are you aware of such case, or any other directly in point ? J. ACHILLES.

Answer.

We dealt with a similar question, under the 1941 Regulations, at 112 J.P.N. 47, P.P. 12. For the reasons there given we think that the offence under reg. 9 (2) is a continuing one.

13.—Shops Act, 1950—*Sunday closing—Meals or refreshments.*

Customers in a shop were observed to be served on a Sunday with the following articles : bread, cakes, fish (*i.e.*, smoked salmon and herring), fish paste made up in dishes, gherkins, tea, salt, flour, tinned spaghetti, and tinned vegetable salad. The manager of the shop states that he is acting on the principle that anything which constitutes a meal or refreshment and which does not have to be cooked can be served on Sunday. I am informed that a neighbouring authority acts upon the principle that any article of food which can be eaten without further preparation and could constitute a meal or refreshment or a part of a meal or refreshment comes under the exemption contained in paragraph 1 (*b*) of sch. 5 to the Act. I am also informed that convictions have been obtained elsewhere for the sale of golden syrup on Sunday. As regards bread and cakes, these appear to be covered by the reported cases *L.C.C.* v. *Lees* and *L.C.C.* v. *Iafrate* [1939] 1 All E.R. 191 ; 103 J.P. 89, and *Binns* v. *Wardale* [1946] 2 All E.R. 100 ; 110 J.P. 246. I shall be glad to have your opinion if the other articles mentioned above come within sch. 5. B. SILURIS.

Answer.

In the last resort the question what are " meals or refreshments " must be decided as a question of fact ; in other words, opinions may differ, and the Divisional Court is unlikely to upset any finding of fact which is *prima facie* sensible. We are not sure that need for cooking, or further preparation, is a satisfactory test : what is cooking ? and what is preparation ? We doubt whether golden syrup in tins is legally saleable ; on the other hand it could be argued that tinned spaghetti was part of a meal, even although it needs heating up. Flour we should consider illegitimate ; also tea and salt, except perhaps in such small quantities as would usually be consumed with a meal at once. But in *L.C.C.* v. *Lees*, *supra*, the Divisional Court gave the " ambiguous wording of the Act " as its reason for not interfering with the magistrate's decision. The whole business is so artificial that the best advice we can give is that, where transactions are on the border line, traders and their customers should be left alone. It is questionable how far local authorities should spend public money upon enforcement of an enactment which Parliament has left obscure, when it is practically certain that the courts will not give any general guidance, and it is impossible to say that public detriment follows one sale and not the other.

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